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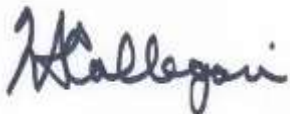
HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, April 29, 2013
83rd Legislature, Number 61
The House convenes at 2 p.m.

Twenty-three bills are on the daily calendar for second-reading consideration today. They are analyzed in today's *Daily Floor Report* and are listed on the following page. HB 595 by Kolkhorst originally was scheduled for second-reading consideration on today's calendar but was recommitted to the House Committee on Government Efficiency and Reform on April 26.

Six postponed bills — HB 1782 by S. Davis, HB 519 by Zerwas, et al., HB 1549 by Laubenberg, HB 1790 by Longoria, et al., HB 2439 by Parker, et al., and HB 832 by Giddings, et al. — are on the supplemental calendar for second-reading consideration today. The analyses are available on the HRO website at <http://www.hro.house.state.tx.us/BillAnalysis.aspx>.



Bill Callegari
Chairman
83(R) – 61

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Monday, April 29, 2013

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SUBJECT: Transferring \$2 billion from the Rainy Day Fund to finance water projects

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 17 ayes — Pitts, Ashby, Bell, G. Bonnen, Crownover, Darby, Gonzales, S. King, Longoria, Muñoz, Orr, Otto, Patrick, Price, Raney, Ratliff, Zerwas

3 nays — Carter, Hughes, Perry

5 absent — S. Davis, Dukes, Howard, Márquez, McClendon

2 present not voting — Sylvester Turner, Giddings

WITNESSES: For — Kip Averitt, Averitt and Associates; Steve Bresnen, North Harris County Regional Water Authority; Heather Harward, H2O4Texas; Laura Huffman, The Nature Conservancy; Lucy Johnson, City of Kyle and Texas Municipal League; Ken Kramer, Sierra Club - Lone Star Chapter; Stephen Minick, Texas Association of Business; *(Registered, but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; Fred Aus, Texas Rural Water Association; Carol Batterton, Water Environment Association of TX and Texas Association of Clean Water Agencies; Walt Baum, Association of Electric Companies of Texas; Allen Beinke, San Antonio River Authority; Cliff Braddock, United States Green Building Council; Sabrina Brown, Dow Chemical; Teddy Carter, Texas Independent Producers and Royalty Owners Association (TIPRO); Howard Cohen, Schwartz, Page & Harding L.L.P.; Heather Cooke, City of Austin and Texas Section American Water Works Association (TAWWA); Jeff Coyle, City of San Antonio; Dale Craymer, Texas Taxpayers and Research Association; Mindy Ellmer, Tarrant Regional Water District; Gary Gibbs, American Electric Power; Stephanie Gibson, Texas Retailers Association and Scotts Miracle Gro Company; Daniel Gonzalez, Texas Association of Realtors; Fred Guerra, Dallas Regional Chamber; Dan Hinkle, Atkins Global; Jay Howard, Guadalupe Blanco River Authority; Billy Howe, Texas Farm Bureau; Shanna Igo, Texas Municipal League; Max Jones, The Greater Houston Partnership; Donald Lee, Texas Conference of Urban Counties; Peyton McKnight, American Council Of Engineering Companies of Texas; David Mintz, Texas Apartment Association; Scott Norman, Texas Association of Builders;

Jessica Oney, Luminant; Joey Park, Texas Wildlife Association; Gardner Pate, Phillips 66; Matt Phillips, Brazos River Authority; Jim Reaves, Texas Nursery & Landscape Association; Dean Robbins, Texas Water Conservation Association; Carlton Schwab, Texas Economic Development Council; Stephanie Simpson, Texas Association of Manufacturers; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Brian Sledge, North Texas Municipal Water District and Dallas County Utility and Reclamation District (Las Colinas); William Stevens, Texas Alliance of Energy Producers; Tom Tagliabue, City of Corpus Christi; Rick Thompson, Texas Association of Counties; CJ Tredway, Central Harris County Regional Water Authority, Independent Electrical Contractors, and Texas Oil & Gas Association; Augusto Villalon, Freese and Nichols; Hope Wells, San Antonio Water System; Daniel Womack, Texas Chemical Council; Perry Fowler)

Against — None

On — Ted Melina Raab, Texas AFT; Luke Metzger, Environment Texas; *(Registered, but did not testify: Carolyn Brittin, Melanie Callahan, Lewis McMahan, Piper Montemayor and Ed Vaughan, Texas Water Development Board)*

BACKGROUND: The State Water Plan is designed to meet water needs during times of drought. Its purpose is to ensure that cities, rural communities, farms, ranches, businesses, and industries have enough water during a repeat of the 1950s drought conditions. In Texas, each of 16 regional water-planning groups is responsible for creating a 50-year regional plan and refining it every five years so conditions can be monitored and assumptions reassessed. The Texas Water Development Board (TWDB) develops the state plan, which includes policy recommendations to the Legislature, with information from regional plans.

The 2012 state water plan includes the cost of water management strategies and estimates of state financial assistance required to implement them. Regional water-planning groups recommended water management strategies that would account for another 9 million acre-feet of water (an acre-foot of water is 325,851 gallons) by 2060 if all strategies were implemented, including 562 unique water supply projects. About 34 percent of the water would come from conservation and reuse, about 17 percent from new major reservoirs, about 34 percent from other surface water supplies, and about 15 percent from various other sources.

Among TWDB's recommendations to the Legislature to facilitate implementation of the 2012 state water plan is the development of a long-term, affordable, and sustainable method to provide financing assistance to implement water supply projects.

Existing state funding for water management strategies within the state water plan relies primarily on general obligation bond issuances that finance loans to local and regional water suppliers. On November 8, 2011, voters approved a constitutional amendment (Proposition 2) authorizing additional general obligation bond authority not to exceed \$6 billion at any time. With this authority, the TWDB can issue additional bonds through ongoing bond authority, allowing it to offer access to financing on a long-term basis. Bonds issued by the TWDB are either self-supporting, with debt service that is met through loan repayments, or non-self-supporting, which requires general revenue to assist with debt service payments, as directed by the Legislature through the appropriations process.

DIGEST:

CSHB 11 would appropriate \$2 billion from the Rainy Day Fund to the State Water Implementation Fund for Texas (SWIFT), contingent upon passage of HB 4 by Ritter that would create the fund.

The money would be held and invested by the Texas Treasury Safekeeping Trust Company and available for use by the Texas Water Development Board for the purposes of the SWIFT.

CSHB 11 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 11 would provide the initial capitalization for the state water implementation fund for Texas (SWIFT), a water infrastructure bank that would be created through the enactment of HB 4 by Ritter to provide a perpetual fund to support low-interest loans to help local and regional entities launch water-related projects. CSHB 11 is necessary to ensure that meaningful financial assistance is available to provide an adequate water supply for the state's future, especially in times of drought.

According to TWDB, critical water shortages will increase over the next 50 years, requiring a long-term, reliable funding source to finance water and wastewater projects. The state water plan has identified projects

intended to help avoid catastrophic conditions during a drought, but rising costs for local water providers, the capital-intensive investment required to implement large-scale projects, and the financial constraints on some communities necessitate a dedicated source of funding to help develop those projects. The capital cost to design, build, or implement the recommended strategies and projects between now and 2060 will be \$53 billion. Municipal water providers are expected to need nearly \$27 billion in state financial assistance to implement these strategies. Any delay in funding would put long-term planning of water projects in jeopardy and increase the overall cost to customers.

Unless the state fully implements its state water plan, 50 percent of Texans by 2060 will lack an adequate supply of water during times of drought. Without an adequate supply of clean, affordable water, the state's economy and public health would be irrevocably harmed. Water shortages during drought conditions cost Texas business and workers billions of dollars in lost income every year. If Texas does not implement the state water plan, those losses could grow to \$116 billion annually.

The Rainy Day Fund would provide an ideal source of funding for the initial capitalization of the SWIFT. This one-time investment would seed a perpetual fund that could grow with limited need for further state allocations. The \$2 billion capitalization could be used in conjunction with the TWDB's existing \$6 billion evergreen bonding authorization, as well as revenue bonding support to provide a meaningful funding solution for larger Texas water projects and financing for many of Texas' smaller communities. Without the initial capitalization of \$2 billion from the Rainy Day Fund, revenue for the SWIFT would have to be raised elsewhere, such as with a fee or tax.

Unlike other important funding decisions facing the state, such as ongoing expenditures for education, this one-time investment in water would not have to be matched with new funds each legislative session. Funding for education, for example, involves straight spending that must be supported by appropriations each session and cannot be secured through a perpetual loan program similar to the way a political subdivision could apply for a water infrastructure loan. CSHB 11's one-time investment in water infrastructure would protect Texans from the economic impact of drought and provide water for generations to come.

The intent of the Rainy Day Fund was never to count against the spending

cap. In any case, other large items of state spending in the coming budget period, including recovery from the substantial spending cuts in fiscal 2012-13, late payments to Medicaid, and public education spending that may be required after the conclusion of the school finance lawsuit, all have the potential to push state spending above the constitutional cap, regardless of whether Rainy Day funds are spent on CSHB 11 or for other purposes.

Providing a funding program for water infrastructure to ensure an adequate water supply would be an appropriate use of the Rainy Day Fund. It was created as a savings account from which the Legislature may appropriate funds in times of emergency, and the state is on the cusp of a drought worse than the 1950s drought of record.

Use of the Rainy Day Fund would not jeopardize the state's credit rating or ability to handle an emergency. The Rainy Day Fund is expected to reach \$11.8 billion by the end of fiscal 2015, according to the comptroller's January 2013 Biennial Revenue Estimate. A transfer of \$2 billion from the fund would leave a comfortable balance for handling an emergency while preserving the state's superior credit rating. Given that the boom in the oil and gas sector shows no sign of slowing, any funds appropriated from the Rainy Day Fund would be quickly replenished. Not spending down the fund could result in its eventual spillover into general revenue for general-purpose spending.

Further, credit rating agencies base each state's credit rating on a variety of factors, including the state's reserve fund. Positive factors in determining the rating include that the fund balance be a percentage of the state's budget, that the reserve fund automatically replenish, and that the state have a willingness to spend the fund to overcome economic distress. Retention of a balance over a long period of time is seen as poor management by credit rating agencies because it gives the appearance that the state would be unwilling to use the fund in any circumstance, which defeats the fund's purpose.

Although the state's water supply is a clear priority, full implementation of the State Water Plan has been delayed for more than a decade. The state is in a position to finally address one of its most pressing needs. Texans have become more educated about drought and its debilitating effects on public health and our economy and the Rainy Day Fund balance is at a level to comfortably make the appropriation. Putting off the appropriation could

result in a wasted opportunity because political landscapes change as other state priorities need funding. The immediate transfer of funds into the SWIFT would allow those funds to grow while the program was created. Also, delaying the Rainy Day Fund appropriation into the SWIFT until 2015 would likely delay the first round of funding. When it comes to water, Texas cannot afford to wait any longer.

While many entities that could benefit from the loan program created by HB 4 have the credit rating to complete a project without state assistance, financing projects through the SWIFT would offer an incentive of buying down their interest rate in order to encourage development and build-up of projects ahead of the critical need. Entities with the necessary credit rating to finance projects on their own would not typically be interested in using state financial assistance due to the administrative burden and additional oversight involved.

HB 4 and CSHB 11 are complementary bills. CSHB 11 is necessary to fund the loan program that would be created by HB 4. Enactment of CSHB 11 would align the funding mechanism with the financing tools laid out in HB 4.

OPPONENTS
SAY:

A \$2 billion transfer from the Rainy Day Fund would not be an appropriate source of funding for the water infrastructure fund proposed in HB 4 because it would exceed the state's constitutional spending cap. The spending cap is an important tool in limiting the size and scope of government because it limits spending growth to no more than the growth of the Texas economy.

Texas has a Moody's AAA bond rating, which allows tens of millions of dollars a year in lower borrowing costs for the state. Texas needs to keep 7.5 percent of its general revenue in the fund to keep its AAA bond rating. Anything less than \$7.2 billion would imperil what has become a major state asset. Today Texas has \$7.9 billion in the fund. Taking \$2 billion out of the fund, not including any money for other priorities earmarked to receive Rainy Day funds, would all but ensure a credit downgrade and curtail the state's ability to deal with a revenue shortfall, a natural disaster, or a school finance case decision that required additional state spending on public education.

The comptroller estimates that the Rainy Day Fund will reach \$11.8 billion by the end of fiscal 2015. However, deposits into the Rainy Day

Fund have been historically hard to estimate, and the last seven estimates have been off by an average of 166 percent, with the closest estimate off by 23 percent. The Rainy Day Fund primarily is funded by oil and natural gas production tax revenue. The oil and gas industry is both cyclical and volatile, and it would be irresponsible for the state to act in a way that assumes the fund will continue to grow at its current rate.

Funding another water lending program would be unnecessary and an inefficient use of Rainy Day funds because entities needing water infrastructure project funding already have tremendous access to capital. TWDB has several lending programs for water infrastructure through bonding programs that use the state's AAA credit rating to guarantee water debt, enabling TWDB to offer inexpensive financing on a long-term basis. TWDB recently received approval for ongoing general obligation bond authority not to exceed \$6 billion at any time. This financing assistance is available even though many entities that are asking for help with projects in the state water plan already have a sufficient credit rating to complete a project without financial assistance from the state. Spending Rainy Day funds for infrastructure projects that already have access to capital would be inappropriate, given that there are several other critical needs in the state with limited funding options.

OTHER
OPPONENTS
SAY:

Much of the concern surrounding CSHB 11 is centered on the debate over which critical need of the state is most deserving of Rainy Day funding. If the funds are to be used for water infrastructure, it might be appropriate to delay the transfer of the funds to the SWIFT to better align with the timeline for project implementation.

While water infrastructure is a critical need for the state, funding roads and education is also a high priority. Other proposed legislation would be more inclusive of these priorities, including HB 19 by Darby, which proposes a one-time allocation of \$3.7 billion from the Rainy Day Fund to capitalize both water and transportation infrastructure programs. This approach also appears in the governor's budget. SJR 1 by Williams proposes a constitutional amendment that would transfer Rainy Day funds for capitalization of the SWIFT (\$2 billion), transportation (\$2.9 billion), and education (\$800 million).

Because some of the mechanics of HB 4, such as the prioritization of projects, would not be fully implemented until 2014, it would be more prudent to leave the money in the Rainy Day Fund to be appropriated in

the fiscal 2016-17 budget when the money actually would be needed. This could avoid the possibility of busting the spending cap in fiscal 2014-15 and allow those funds to continue accruing interest in the Rainy Day Fund. Decreasing the balance of the Rainy Day Fund would decrease interest income that otherwise would be credited to the fund. HB 4 and CSHB 11 do not stipulate how much would be invested, nor which investments would be made, with the balances of the SWIFT, which means interest earnings in the SWIFT cannot be determined.

Delaying the actual transfer of funds into the SWIFT until they were actually needed also could provide flexibility to use Rainy Day funds for other critical needs that were more immediate.

NOTES:

A similar bill, SB 22 by Fraser, was left pending in the Senate Finance Committee subcommittee on Fiscal Matters on March 11.

HB 4 by Ritter, the complement to HB 11, would create the SWIFT to serve as a water infrastructure bank to enhance the financing capabilities of the TWDB. HB 4 was passed by the House on March 27, reported favorably as substitute from the Senate Natural Resources Committee and placed on the Senate intent calendar on April 24.

SB 4 by Fraser includes a provision that would create the SWIFT. SB 4 was reported favorably as substituted from the Senate Natural Resources Committee on April 22 and placed on the Senate intent calendar on April 24.

SJR 1 by Williams proposes a constitutional amendment to transfer Rainy Day funds for capitalization of the SWIFT (\$2 billion), transportation (\$2.9 billion), and education (\$800 million). The Senate passed SJR 1 on April 24.

Committee substitute. The committee substitute differs from the bill as filed in that it removes a provision from the introduced bill that would have transferred the Rainy Day funds to the Texas Water Development Fund II in the event that HB 4 did not pass and the SWIFT was not created.

Fiscal note. According to the Legislative Budget Board (LBB), HB 11 would have no significant impact to general revenue related funds in fiscal 2014-15. By decreasing the balance of the Rainy Day Fund, the bill would

also decrease interest income from that fund. The LBB says it does not have enough information about potential investments using SWIFT balances to estimate interest earnings to the receiving SWIFT fund.

SUBJECT: Continuation of the Texas Commission on the Arts

COMMITTEE: Culture, Recreation, and Tourism — favorable, without amendment

VOTE: 6 ayes — Guillen, Aycock, Kuempel, Larson, Nevárez, Smith
0 nays
1 absent — Dukes

SENATE VOTE: On final passage, March 27, 2013 — 30-0

WITNESSES: *(On House companion bill, HB 1674)*

For — Amy Barbee, Texas Cultural Trust; Michael Burke, Texans for the Arts; *(Registered, but did not testify:* Bill Hammond, Texas Association of Business)

Against — None

On — Emily Johnson, Sunset Advisory Commission; *(Registered, but did not testify:* Gary Gibbs, Texas Commission on the Arts)

BACKGROUND: The Texas Commission on the Arts’ mission is to advance the state economically and culturally by investing in the creative arts. It awards grants to nonprofit organizations, promotes the arts to tourists, and provides arts information to businesses and individuals.

The agency is governed by a 17-member, governor-appointed board, with members serving six-year terms. Members must represent all fields of the arts and be known for their professional competence, and at least two members must be from counties with a population of less than 50,000. In fiscal 2012, the agency operated on a budget of \$3.7 million, of which \$2.8 million was awarded as grants to other organizations. The agency employs a staff of 12.

The agency last underwent Sunset review in 2007 and its current authority will expire, unless renewed, on September 1, 2013.

DIGEST: SB 202 would continue the Texas Commission on the Arts to September 1, 2025.

The bill would reduce the size of the board from 17 to nine members, who would serve staggered, six-year terms. It would establish a schedule for the reduction in board size and set the terms for new board members. The board would be required to represent a diverse cross-section of the arts.

SB 202 would add language detailing the commission's current grant authority.

The bill would take effect on the 91st day after the end of the last day of the legislative session (August 26, 2013).

SUPPORTERS SAY: SB 202 would ensure that the Texas Commission on the Arts continued to play its vital role in preserving the state's cultural and artistic heritage and fostering the arts throughout the state.

The agency funds a large and diverse group of organizations through its grant program. The agency awards roughly 1,100 grants a year, many of which go to rural communities, making the arts available to parts of the state that otherwise would not have access to arts programming. The relatively small investment by the state in the Texas Commission on the Arts leverages about \$1 million in federal funds and \$277,000 in local spending. All 50 states provide funding for the arts, typically through independent agencies such as the Texas Commission on the Arts.

Continuation of the Texas Commission on the Arts also would allow the agency to maintain its economic role. Texas' arts and cultural industry accounts for an estimated \$2.5 billion in tourism spending per year and 21,000 jobs with payrolls in excess of \$700 million.

Change in membership. SB 202 would reduce the size of the commission to a manageable size, saving staff time and about \$9,000 per year because of reduced travel, lodging, and per diem expenses. The commission currently has more board members than staff members, and a large board is not needed for such a small agency. The change in board composition would be phased in so that no current board member would be affected. Rural county representation would be unchanged, with two members from counties with populations of less than 50,000. The agency still would be

able to secure needed expertise and diversity for its grant review process through independent grant review panels.

The August 26, 2013 effective date of the bill would allow for the change in board composition to start as early as August 31, 2013. Under current law, six commissioner positions are set to be filled on August 31, 2013. SB 202 would abolish those positions prior to the date that they would have been filled, ensuring a quick reduction in commission size.

Clarifying language. SB 202 would clarify the commission's existing grant authority, making it clear that the commission could award grants to fulfill its mission.

OPPONENTS
SAY:

Support of the arts is not a core government function and the state should abolish the Texas Commission on the Arts. Texans should support a thriving arts community through private philanthropy and corporate sponsorship — not through government appropriations.

Change in membership. While a reduction in board membership is appropriate, SB 202 would not decrease the number of commissioners from small rural counties with populations of less than 50,000. This would increase the power of the less-populated areas of the state at the expense of the state's growing, more populous counties.

NOTES:

SB 202 is identical to the House companion bill, HB 1674.

SUBJECT: Establishing a security freeze on credit reports for minors

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Villalba, Walle, Workman
0 nays

WITNESSES: For — Robert E. Johnson Jr., City of Houston; (*Registered, but did not testify*: Mary Calcote, Experian)

Against — None

BACKGROUND: Business and Commerce Code, sec. 20.01(3) defines a “consumer file” as all the information about a consumer that is recorded and retained by the consumer reporting agency. Sec. 20.01(4) defines “consumer report” as a report on a person’s creditworthiness, credit standing, debts, character, and other personal characteristics for the purposes of eligibility for credit or insurance.

Sec. 20.01(8) defines “security freeze” as a notice placed on a consumer file that prohibits a consumer reporting agency from releasing a consumer report relating to the extension of credit without the consumer’s express authorization.

Sec. 20.038(11), (12), and (13) exempts from a security freeze:

- a check service or fraud prevention service company that issues consumer reports to prevent or investigate fraud for purposes of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment;
- a deposit account information service company that issues consumer reports related to account closures caused by fraud or similar negative information about the consumer to a financial institution for use in reviewing the consumer’s request for a deposit account; or
- a consumer reporting agency that acts only to resell credit information and does not maintain a permanent database of credit information from which to produce new consumer reports.

DIGEST:

CSHB 1087 would establish procedures with respect to consumer credit for placing and removing a security freeze on the records of protected consumers and would set requirements governing the use of a protected consumer's record or report.

Placement and removal of security freeze. The bill would enable a protected consumer, defined as a Texas resident younger than 16 years of age at the time of a request, to ask a consumer reporting agency to place a security freeze on the protected consumer's file. A protected consumer's representative also could submit the request to the consumer reporting agency if he or she provided proof of identification, demonstrated proof of authority to act on behalf of the protected consumer, and paid a fee that could not exceed \$10. The fee would not apply if:

- the representative submitted a police report or other report demonstrating that the security freeze involved a crime of identity theft; or
- the consumer reporting agency already had a file on the protected consumer.

If the consumer reporting agency did not already have a file on the protected consumer, the agency would create a record for the protected consumer and place a security freeze on that record within 30 days of receiving the request. The bill would define "record" as a compilation of information created by a consumer reporting agency to identify a protected consumer solely for the purposes of placing a security freeze.

The freeze on the protected consumer's record or file would remain in effect until the consumer or representative requested its removal, or if the agency found the consumer or the representative materially had misrepresented facts in requesting the creation of a record or security freeze. Either the consumer or consumer's representative could request removal of the security freeze by submitting proof of identification and sufficient authority to make the request, and by paying the fee of \$10 or less. After receiving the request, the consumer reporting agency would have 30 days to remove the security freeze.

Use and release of records or reports. The bill would prohibit the agency from using the protected consumer's record to consider creditworthiness, credit standing, credit capacity, or other characteristics

of the consumer for purposes of eligibility for credit or insurance. While a security freeze was in effect, the bill would prohibit the release of a protected consumer's report, any information derived from the report, or any record created to protect the consumer.

CSHB 1087 would not apply to the use of a protected consumer's report or record by:

- a credit monitoring service subscribed to by the protected consumer or representative;
- a person providing a copy of the report to the protected consumer or representative at the request of the consumer or representative;
- a consumer reporting agency with respect to a database or file concerning information on criminal history, personal loss history, fraud prevention or detection, tenant screening, or employment screening; or
- a check service or fraud prevention service company, a deposit account information service company, or a consumer reporting agency that acts only to resell credit information described by Business and Commerce Code, sec. 20.038(11), (12), and (13).

CSHB 1087 would be the controlling legislation over any conflict with another section of the Business and Commerce Code, ch. 20 regarding a protected consumer. The exclusive remedy for violations under the bill would be a suit brought by the attorney general under Business and Commerce Code, sec. 20.11

The bill would take effect January 1, 2014.

**SUPPORTERS
SAY:**

CSHB 1087 would make Texas a pioneer in extending identity theft protection to its most vulnerable consumers — children under the age of 16. Only one other state, Maryland, has enacted a law enabling credit security freezes for minors. Identity theft hits children especially hard, as years may pass before the theft is detected, and the damage done may prove difficult to repair. The bill would enable parents or guardians to take measures against identity thieves who use the identifying information of minors to open up lines of credit. A parent would be able to request that an agency place a freeze on activity on a child's credit file if a file had already been opened or create a credit record and freeze it.

Not only would the bill help parents stop ongoing identity theft, it would

allow parents to take preventive measures against possible theft of their children's identities by requiring credit agencies to act quickly in placing a properly requested security freeze. The bill would enable credit reporting agencies to create and freeze a credit record, which would be different from a credit file in that it could not be used to establish a line of credit.

The protections in CSHB 1087 would apply only to consumers younger than 16 years old because older, minor consumers have legitimate needs for the use of credit, such as buying a car. The law enacted in Maryland, which established the upper age limit for a protected consumer at 16 years old, has been successful and would provide a good model for Texas to follow.

OPPONENTS
SAY:

The attorney general should not be the exclusive remedy for violations of CSHB 1087. As a first step, the bill should create an administrative remedy to require the compliance of credit reporting agencies.

OTHER
OPPONENTS
SAY:

By limiting protections to consumers under the age of 16, the bill would not go far enough to protect Texas minors. All children under age 18 are susceptible to identity theft. This group enjoys a number of other protections under law, and CSHB 1087's safeguards against identity theft should extend to them as well.

NOTES:

While HB 1087 as introduced and the committee substitute both generally concern the establishment of a consumer file security freeze for consumers under the age of 16, the bills have no precise provisions in common.

The companion, SB 60 by Nelson, was passed by the Senate on the local and uncontested calendar on March 13 and has been referred to the House Business and Industry Committee.

SUBJECT: Requiring cemetery plot brokers to register with banking department

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 7 ayes — Villarreal, Flynn, Anderson, Burkett, Laubenberg, Longoria, Phillips
0 nays

WITNESSES: For — Russell Allen and Arlie Davenport, Texas Cemeteries Association;
(*Registered, but did not testify:* Jim Bates, Funeral Consumers Alliance of Texas)

Against — Joan Muser, Lots for Less, Inc.

On — Stephanie Newberg, Texas Department of Banking

BACKGROUND: Finance Code, sec. 11.307 requires the Texas Department of Banking to direct the entities it regulates to provide notification to consumers regarding how to file a complaint.

DIGEST: CSHB 52 would require someone who sold the exclusive right of sepulture (right of burial in a cemetery plot) to register with the Texas Department of Banking as a cemetery broker. “Cemetery broker” would mean a person who sold the right of burial in a cemetery plot to another person. The term would not apply to a person who was an officer, agent, or employee of the cemetery organization in which the plot was located or who originally purchased the burial plot right for personal use.

Registration process. Cemetery brokers would have to file a notarized one-time, revocable registration with the banking commissioner with the broker’s contact information, contact information for a written complaint, and an e-mail address. The broker would have to update the registration information within 60 days of any change. The department could charge a registration fee that would not exceed \$100 per year.

Exemptions from registering as a cemetery broker. A member or affiliate of a cemetery organization acting under the direction of the cemetery organization or an employee of a registered cemetery broker

would not have to register. Others exempt would include a person named in the certificate of ownership or conveyance for the plot with the cemetery, a spouse or heir, an executor, administrator, or guardian of a grantee, and an attorney or a durable power of attorney for a grantee who was not otherwise engaged in the business of a cemetery broker.

Sale or resale requirements. The bill would require the resale of a right of burial in a cemetery plot to comply with the rules of the cemetery organization and any restrictions in the certificate of ownership, quitclaim agreement, or other instrument of conveyance. It would have to be in a form authorized by or acceptable to the cemetery organization and signed by the grantee named in the certificate of ownership, the designated purchaser or transferee, and each cemetery broker involved in the transfer of the right of burial. The instrument of conveyance would have to be filed and recorded with the cemetery organization by the third business day after the sale. A cemetery organization would have to provide its rules, conveyance forms, and written guidelines requested by a cemetery broker. A cemetery broker could not divide and resell a collective right of burial without the permission of the cemetery organization. A cemetery broker would be required to collect any fee required by law and the cemetery organization and remit it to the cemetery organization. A cemetery organization could not charge a fee for the resale of a right of burial that exceeded the fee that the cemetery organization charged on the sale of a right of burial.

Record keeping requirements. CSHB 52 would require a cemetery broker to keep a record of each sale or resale that included the name and address of the purchaser, purchase date, and a copy of the purchase agreement including: the name and address of the cemetery, description of burial rights, purchase price, amount of fees collected and remitted, and detailed information on the disposal of the purchase agreement.

Record examination. Cemetery brokers must keep reliable and retrievable electronic records. The department would examine the records of a cemetery broker that the commissioner determined was necessary to safeguard the interests of purchasers and beneficiaries of the right to burial and enforce applicable law. The commissioner would charge an examination fee sufficient to cover the cost of the examination and the salary and expenses for a department employee.

Broker requirements. A cemetery broker would be required to provide

information to consumers on how to file a complaint. If the commission received a complaint against a cemetery broker, the commission would notify the cemetery broker or its representative within 31 days of the complaint. The department may require the cemetery broker to resolve the complaint or provide the department with a response to the complaint, or provide written direction requiring the cemetery broker to take specific action to resolve the complaint.

Termination of registration. A cemetery broker could revoke its registration at any time, and the commissioner could revoke the license of a cemetery broker who failed to pay the annual administration fee, refused or failed to comply with the department's written request to respond to a complaint, or if the commissioner determined that the cemetery broker engaged in conduct that violated federal or state law or was found to be dishonest or fraudulent. The commissioner would be required to provide the reason for revoking a cemetery broker's license, and the cemetery broker could appeal the decision.

Criminal activity. CSHB 52 would make it a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) to offer or receive payment to solicit business for a cemetery broker, fail to keep records of sales or resales or to collect and remit required fees for the sale or resales of the right of burial, or fail to register as cemetery broker if engaged in that business. The bill would allow the commissioner to cancel or not renew a cemetery broker's registration if a hearing established a pattern of willful disregard for laws governing Texas cemeteries.

Emergency orders. The commissioner could issue an immediate emergency order if irreparable harm to the public or a beneficiary under the sale of a right of burial were discovered. The emergency order would remain in effect unless stayed by the commissioner. If the person named in the order requested that the emergency order be stayed, the commissioner would have to set a hearing within 22 days to determine the validity of the findings supporting the immediate effect of the order. The commissioner could order restitution if, after the hearing, the commissioner determined that the person failed to remit a fee for the sale of the right of burial in a cemetery plot or withheld money that belongs to a cemetery organization.

The commissioner could seize the accounts in which funds from the sold right of burial were held with credible evidence that a person failed to properly remit the fee, withheld money that belongs to a cemetery

organization, refused to submit to department examination, was subject to registration cancellation, or had not registered as a cemetery broker.

Nonemergency orders. A nonemergency order would take effect as the commissioner proposed unless the person named in the order requested a hearing within 15 days after the order was mailed. The commissioner could initiate an administrative claim for costs incurred in the administration or transfer of the seized assets and records and costs related to the administration and performance of an instrument of conveyance related to the sale by the person named in the order. The commissioner could seek additional remedy to enforce penalties for other violations.

Authorizing administration fees. CSHB 52 would allow the finance commission to adopt fees associated with the enforcement and administration of the provisions relating to cemetery brokers, the retention and inspection of records relating to the sale or resale of burial plot rights, and changes in management or control of a cemetery broker's business.

**SUPPORTERS
SAY:**

CSHB 52 would reduce fraud and protect consumers from problems that result from unrecorded sales of burial plots in cemeteries. Many people pre-purchase the right to be buried in a cemetery plot or sell the right to be buried in a plot that they do not intend to use. Often a third-party broker assists with the transaction. There has been a recent increase in online cemetery plot sales that have sold the same right of burial more than once.

There have been instances in which a family bought a right of a burial plot through a broker and later found that the plot was still listed with the cemetery as belonging to the original owner. This mistake could have resulted from a broker's failure, whether fraudulent or negligent, to notify the cemetery of the sale, fill out the proper conveyance paperwork, and submit the appropriate fees to change the certificate of ownership. The bill would reduce this unfortunate and difficult-to-resolve scenario affecting consumers by simply allowing the banking commissioner to require registration and take action against a broker who did not follow proper procedure.

**OPPONENTS
SAY:**

CSHB 52 would place burdensome regulations on right of burial brokers, would not fix the problem it intends to address, could reduce competition, and would criminalize common industry referral practices.

The bill would require responsible small businesses to comply with

burdensome new regulations because of apparent, but undocumented, problems caused by online brokers. The bill would exempt attorneys and executors who could also fail to turn in paperwork to transfer the right of burial, which would cause the ownership discrepancy the bill intends to prevent. Small brokers have been operating responsibly for many years, and CSHB 52 would create unnecessary regulations for something that is not really a problem.

Many cemetery brokers are community residents who could exit the business if forced to comply with new registration requirements and regulations. Fewer brokers could mean less competition and higher prices for people who need to buy a right of burial plot in a cemetery.

CSHB 52 should not make it a crime for an individual to receive a payment to solicit business for a cemetery broker. The bill would criminalize the common industry practice of offering a small token of appreciation for a referral by a friend or former client to a trusted broker who has served someone well in the past.

NOTES:

The committee substitute differs from the bill as filed in that it includes exemptions from registering as a cemetery broker for a surviving spouse or heirs-at-law of the owner of the right of a burial plot in a cemetery.

SUBJECT: Texas Tech Health Science Center at El Paso

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 9 ayes — Branch, Patrick, Alonzo, Clardy, Darby, Howard, Martinez, Murphy, Raney
0 nays

WITNESSES: For — Paul Foster; (*Registered, but did not testify*: Richard Dayoub, Greater El Paso Chamber of Commerce; Robert Flores, Texas Association of Mexican-American Chambers of Commerce)
Against — None
On — Kent Hance, Texas Tech University System; (*Registered, but did not testify*: David Gardner, Texas Higher Education Coordinating Board)

BACKGROUND: Texas Tech University since 1973 has operated a regional health sciences center in El Paso. The Paul L. Foster School of Medicine, Gayle Greve Hunt School of Nursing and Graduate School of Biomedical Sciences are part of the health sciences center in El Paso.
Tex. Const., Art. 7, sec. 17 allows the Legislature to provide appropriations to universities, health-related institutions and technical college institutions. Texas Tech University Health Sciences Center, including its campus in El Paso, receives general revenue from the Higher Education Fund provided by this section of the state constitution.

DIGEST: CSHB 257 would make the Texas Tech University Health Sciences Center at El Paso campus a component institution within the Texas Tech University System under the direction, management, and control of its board of regents.
The board could make joint appointments in the health science center and other component institutions. It could accept gifts and grants for the benefit of the Texas Tech University Health Sciences Center and could enter into agreements with other institutions or entities. A teaching hospital provided by a public or private entity would be authorized but

could not be constructed, maintained, or operated with state funds.

CSHB 257 would amend the Education Code to reflect the Texas Tech University Health Sciences Center at El Paso as a component institution operating within the Texas Tech University System. Employees of the Texas Tech Diabetes Research Center would become employees of the Texas Tech University Health Sciences Center at El Paso.

The Texas Tech University Health Sciences Center at El Paso would be subject to the continuing supervision of the Texas Higher Education Coordinating Board and related rules.

If the bill received the vote of more than two-thirds of members from each house, the institution would be eligible for appropriations from the Higher Education Fund beginning with the annual appropriation for the state fiscal year beginning September 1, 2015.

This bill would take effect immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS
SAY:**

Creating autonomy through a stand-alone health sciences center in El Paso that is part of the Texas Tech University System would spur the institution's valuable health care mission. It also would improve medical access and quality of life for an underserved community.

Autonomy for the health sciences center in El Paso would allow its administration to adjust its programs quickly to new trends and respond to unexpected health care demands, which would sharpen efficiency and save money. The growing campus in El Paso, which is comprised of an urban and younger Hispanic-majority population, caters to a different community than the campus in Lubbock. El Paso County has about 240,000 uninsured residents and ranks among the counties with the least access to care in the United States. Texas Tech medical students help provide care as part of the school's approach of educating people in practical settings. Allowing the health sciences center to make decisions as a stand-alone institute also could help preserve the slate of research programs that focus on diseases and conditions that are prevalent for Hispanics, the fastest-growing demographic in the United States. How Texas provides health care to this community could serve as a model for other states and communities to follow.

The fiscal note prepared by the Legislative Budget Board indicates there would not be a significant fiscal implication to the state and points out that administrative, accreditation, and technology costs of creating a stand-alone institution would be absorbed by Texas Tech University Health Sciences Center.

The bill also would encourage more private donations from people who may be reluctant to give to satellite campuses. Charitable giving and endowments are invaluable to growing a higher education institute. Support from private donors could yield growth at the health sciences center in El Paso, which, in turn, could draw investments from companies in the health care industry and provide the community with high-paying jobs.

**OPPONENTS
SAY:**

CSHB 257 simply would create an unnecessary administrative structure that could siphon tax dollars from more pressing state needs and could lead to an increase in the fees and tuition that students pay. Texas Tech already provides the necessary staff to run the health sciences center in El Paso. Creating a component institution of the Texas Tech University System, with its own president and additional administrative staff, would require additional funding when money for higher education is scarce.

NOTES:

The companion bill, SB 120 by Rodriguez, was passed by the Senate by a vote of 30-1 on March 13 and reported favorably by the House Higher Education Committee on April 23.

The committee substitute differs from the bill as filed by:

- stipulating that a public or private entity could provide for the health science center's teaching hospital and prohibiting the use of state funds to construct, maintain, or operate the teaching hospital;
- adding a provision stipulating that a vote of more than two-thirds of the membership of each chamber of the Legislature would create the component institution and qualify it for appropriations from the Higher Education Fund;

SUBJECT: Access to electronic information on driver's licenses or IDs

COMMITTEE: Technology — favorable, without amendment

VOTE: 5 ayes — Elkins, Button, Fallon, L. Gonzales, Reynolds
0 nays

WITNESSES: For — Kim Ford, First Data; Ronnie Volkening, Texas Retailers Association; (*Registered, but did not testify:* Kathy Barber, National Federation of Independent Business/Texas; Doug DuBois Jr., Texas Food and Fuel Association; Randy Erben, The Home Depot; Stephanie Gibson, Texas Retailers Association; John Kroll, Gemalto Inc., Michaels Stores; Barbara Waldon, HEB)

Against — None

On — Michael Terry, Department of Public Safety

BACKGROUND: It is an offense under Transportation Code, sec. 521.126(b) to access or use electronically readable information or compile or maintain a database of such information derived from a driver's license, commercial driver's license, or personal identification certificate.

Transportation Code, sec. 521.126(e) provides an exception to the offense in Transportation Code sec. 512.126(b) for financial institutions or businesses. Under this exception, information must be accessed or used only for the purposes of identification verification or check verification, and information may be compiled or maintained in a database by a financial institution only with the consent of the person whose information is being included in the compilation or database.

DIGEST: HB 346 would allow a check services or fraud prevention services company governed by the Fair Credit Reporting Act access to electronically stored information on a person's driver's license or personal ID certificate if the information were accessed as part a transaction initiated by the license holder to effect, administer, or enforce the transaction.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS
SAY:**

HB 346 would streamline the check fraud prevention process and protect businesses. Check fraud causes millions of dollars of loss to Texas businesses. The information contained on the magnetic strip on a license or ID is the same as the information on the front, which businesses and financial institutions already access and transmit to check fraud prevention services to verify transactions. Electronic information also is more difficult to alter fraudulently than the information on the face of the card, and is more trustworthy and more likely to be accurate. The bill would reduce human error and inefficiencies associated with manually entering this information, improve the fraud prevention process, and save money.

Privacy protections in federal and state law prevent abuse of personal information. All institutions that would be affected by this bill are covered by regulations that govern the storage and disposal of personal information, so there would be no loss of privacy because of this bill. Because these companies already access and transmit the same information stored on the magnetic strip, allowing electronic reading would not materially change access to personal information. It merely would streamline the existing process. Several states have updated their statutes to allow for scanning and storage of this information because of the improvements in technology and regulation.

**OPPONENTS
SAY:**

Allowing additional entities to access the electronic information on licenses and IDs would contribute to the erosion of privacy and dissemination of personal information. Scanning the magnetic stripe of a driver's license makes it easier to electronically store and manipulate the information, which companies could use for data mining and marketing purposes. Customers don't sign privacy statements with every company that might be able to capture their information to transmit it under this bill and may not know what that company intends to do with that data.

SUBJECT: Calculating the rollback tax rate of a school district

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 5 ayes — Hilderbran, Bohac, Button, Gonzalez, Strama
0 nays
4 absent — Otto, Eiland, Martinez Fischer, Ritter

WITNESSES: For — George Christian, Texas Taxpayers and Research Association; Dominic Giarratani, Texas Association of School Boards; Kelly Penny, Coppell ISD; Christy Rome, Texas School Coalition (*Registered, but did not testify*: Amy Beneski, Texas Association of School Administrators; Ken McCraw, Texas Association of Community Schools; Ted Melina Raab, Texas AFT; Wayne Pierce, Equity Center; Bob Popinski, Moak, Casey & Associates)

Against — None

On —Debbie Cartwright, Comptroller of Public Accounts; Rodrigo Carreon

BACKGROUND: Tax Code, sec. 26.08, requires voter approval of any school district tax rate increase above the district's calculated rollback tax rate. The code grants an exception for a rate increase necessary to respond to a disaster for which the governor has requested federal disaster assistance.

DIGEST: CSHB 671 would apply to a school district whose maintenance and operations (M&O) tax rate was \$1.50 or less per \$100 of taxable property value for the 2005 tax year.

Under CSHB 671, the rollback tax rate of a school district that had adopted a tax rate that *was not* approved at an election in tax year 2006 or since would be the lesser of:

Sum 1

- the state compression percentage as determined under the Education Code multiplied by the M&O tax rate adopted by the

- district;
- \$.04 per \$100 of taxable value; and the
- district's current debt rate; or

Sum 2

- the effective M&O tax rate; and
- the compression percentage for the current year multiplied by \$.06 per \$100 of taxable value.

If the district's adopted tax rate *was* approved at an election in 2006 or since, the district's rollback tax rate would be the sum of:

- the product of the compression percentage and the M&O tax rate;
- \$.04 per \$100 of taxable value;
- a rate equal to the sum of the differences between the adopted tax rate of the district and the rollback rate of the district for each year since, and including, 2006; and
- the district's current debt rate.

The bill would apply to a property tax rate of a district beginning with the 2013 tax year.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 671 would address a problem created by current laws governing how school districts with a tax rate between \$1.04 and \$1.17 set their property tax rates. The effect of the bill would be to make it easier for districts in this category that have approved a higher tax rate — there are an estimated 300-350 districts that meet the criteria at this time — to reduce their tax rates and therein lighten the property tax burden shouldered by district residents.

Current law requires a school district that adopted a tax rate above the district's rollback rate, a complicated calculation defined in statute, to hold an election in which the voters must approve or disapprove the higher rate. If the voters reject the higher rate, the district's tax rate may be set no higher than its rollback rate.

However, this can create a disincentive for districts that had approved a

higher tax rate to reduce it for a short period of time because doing so would require them to have an election to reauthorize the current tax rate. Elections are costly and difficult to administer, and they pose an element of risk that the current tax rate would not be reapproved. As such, many districts are hesitant to revise the rate downward, even when it means they would otherwise be over-collecting taxes.

CSHB 671 would set the authorized tax rate as a ceiling under which the local school board would have the authority to float the tax rate down or up as long as it did not exceed the ceiling. This would provide local flexibility to set the rate while at the same time removing barriers to reducing them.

The bill would not, in any case, allow a district to go up to a rate that was not approved through an election. The election requirement, which is totally preserved under the bill, gives district boards a strong incentive to keep rates closely tailored to costs because a defeat at the polls requires a drop back down to the rollback rate. The bill would not impact or alter this incentive and thus would not open the door to excessive spending.

**OPPONENTS
SAY:**

While well intended, CSHB 671 could open the door to excessive spending on the part of school boards by taking away the popular election requirement for a tax increase, an important check on school tax rates. School boards could take the opportunity this bill presented to unnecessarily raise the ceiling to buy the assurance of being able to return to a higher rate in the future. The election requirement is a strong safeguard against the misuse and abuse of taxing privileges. Weakening this requirement could be an invitation to school boards to raise tax rates and increase spending to match.

NOTES:

The committee substitute differs from the bill as filed by adding the M&O tax rate adopted by a district for the 2005 tax year to the calculation of the adopted tax rate for a district that approved a rate at an election in 2006 or since.

SUBJECT: Regulating prepaid funeral benefits contracts

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 7 ayes — Villarreal, Flynn, Anderson, Burkett, Laubenberg, Longoria, Phillips
0 nays

WITNESSES: For — Jim Bates, Funeral Consumers Alliance of Texas (*Registered but did not testify*: Matthew Emal, Service Corporation International; Bradford Shields, Texas Cemetery Association)

Against — None

On — (*Registered, but did not testify*: Stephanie Newberg, Texas Department of Banking)

BACKGROUND: Finance Code, sec. 154 gives the Texas Department of Banking the authority to regulate prepaid funeral services.

DIGEST: **Investigation and subpoena authority.** CSHB 1489 would allow the banking commissioner of Texas (commissioner) to conduct an investigation and issue subpoenas on reasonable suspicion of misallocation or embezzlement of prepaid funeral funds or unauthorized sale of prepaid funeral benefits. The commissioner's subpoena could require a person to attend a hearing, testify under oath, and produce documents in either Austin, Texas or another location. A district court in Travis or another county could issue subpoena orders, on application of the commissioner, if a person refused to obey the subpoena.

Prohibition orders. The commissioner could prohibit a person from participating in the prepaid funeral business if the person committed or participated in making or attempting to make an illegal contract, or engaged in fraud, deception, misrepresentation, or another dishonest practice in the sale of a contract. The commissioner also could prohibit a person from the business if the person violated a cease-and-desist order, made false record entries, received financial gain by violating a provision, or as a result of any those actions caused a purchaser to suffer financial

loss or have diminished interests in the sale.

The commissioner would have to deliver a prohibition order directly or by certified mail and state the grounds for the order, effective dates, and duration of the order. The commissioner could make the order perpetual, effective for a specific time period, or impose other conditions in the order.

The prohibition order would take effect and be final if the person named in the order did not request a hearing in writing before the effective date. If the person requested a hearing, the commissioner would conduct a hearing according to statutory rules and thereafter issue or decline to issue the proposed order, which would be immediately final with regard to enforcement and appeal. The order could be appealed according to general provisions of the Finance Code.

A person subject to a prohibition order could apply under oath to the commissioner to be released from the order after 10 years from the date of its issuance, which the commissioner would have the discretion to approve or deny.

Transfer, sale, or default of a business. CSHB 1489 would require a permit holder transferring 25 percent or more of the ownership to notify the banking department and either the depository of money held or the issuer of insurance funding contracts of the change within seven days of a voluntary transfer and one business day for an involuntary transfer.

The new owner would have to apply for a permit from the department if the owner obtained 51 percent or more of the business. If the commissioner denied the application, the applicant could request a hearing no later than 15 days after notification.

A seller of prepaid funeral benefits would have to notify purchasers of an outstanding contract if the funeral provider named in the contract defaulted no later than 90 days after notification of closure.

Permit renewal. CSHB 1489 would require anyone who sells prepaid funeral contracts to renew the sales permit so long as the seller had outstanding contracts. A seller could renew an unrestricted sales permit if the seller wanted to continue selling prepaid funeral benefits and demonstrated continued compliance with statutory qualifications.

A seller would receive a restricted permit if the seller could not demonstrate continued compliance with statutory qualifications or no longer wished to sell prepaid funeral benefits. A seller with a restricted license could not sell prepaid funeral benefits during the time the permit was restricted and any contract sold under a restricted permit would be void.

General requirements. A person named in an emergency order would have to file a written hearing request with the commissioner within 30 days of the order being mailed or delivered.

The attorney general would be able to institute a suit against a person that violated provisions governing prepaid funeral benefits in a district court in Travis County.

The commissioner could use any information obtained in the seizure of fund accounts and records as evidence in a proceeding.

Collected deposits. CSHB 1489 would require money collected as a deposit for a prepaid funeral service to be deposited in a restricted account carried by the funeral provider with the words "prepaid funeral benefits" or "pre-need funeral benefits."

Funeral providers. CSHB 1489 would require funeral providers to notify sellers of prepaid funeral benefits with an outstanding contract of its closure no later than 15 days after the closure.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

HB 1489 would protect consumers by providing the banking commissioner the proper authority to investigate fraud claims of an industry it already regulates and permits. In fiscal 2012, 394 companies or individuals held permits to sell prepaid funeral benefits, and the value of the contracts monitored by the department was more than \$3.2 billion. This bill would give the department the tools it needs to protect consumers, often the elderly, in this fast-growing business.

The commissioner often receives suspicious activity reports (SAR) on funeral brokers or unlicensed operators selling funeral benefits but does not have the authority to investigate these SARs as it does for banks and

money service businesses. The bill would give the commissioner the proper authority to follow up on significant suspicion of fraud.

Those concerned that the commissioner would have too much authority to investigate should recognize that investigations require a reasonable suspicion of fraud, not just a complaint. The commissioner already has this authority to investigate banks and money service organizations suspected of fraud and needs the same authority to quickly resolve a fraud allegation instead of going through a district attorney. Also, these claims are often too small for a consumer to hire an attorney and file a personal claim. The industry, consumer groups, and the banking department agree that the bill would give the commissioner the proper investigative authority to target bad actors.

**OPPONENTS
SAY:**

CSHB 1489 would give the commissioner too much investigative authority that could burden businesses with record requests and deny them due process. If there's suspicion of major fraud, there are other ways for consumers to report it and other ways for the banking commission to obtain records.

NOTES:

The companion bill, SB 297 by Carona, was passed by the Senate by a vote of 31-0 on March 13. It was reported favorably by the House Investments and Financial Services Committee on April 22 and has been sent to the House Local and Consent Calendars Committee.

The committee substitute differs from the bill as filed in that it would:

- include a provision that would require the commissioner to have a reasonable suspicion of fraud or embezzlement to conduct an investigation;
- give the person named in an emergency order 30 days to request a hearing, rather than the 15 days in the filed bill;
- make evidence seized by the commissioner admissible as evidence in a proceeding before the commissioner;
- include the procedures that the commissioner would follow if a person named in a prohibition order requested a hearing and the procedure for appealing an issued prohibition order.

SUBJECT: Liability protections, other changes related to spaceflight activities

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 9 ayes — J. Davis, Vo, Bell, Y. Davis, Isaac, Murphy, Perez, E. Rodriguez, Workman
0 nays

WITNESSES: For — Lauren Dreyer, SpaceX; Ken Hampton, Greater Waco Chamber of Commerce; Gilberto Salinas, Brownsville Economic Development Council; Caryn Schenewerk, SpaceX; (*Registered, but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; Jason Hiltz, Brownsville Economic Development Council; Carlton Schwab, Texas Economic Development Council)

Against — None

On — Brad Parker, TTLA

BACKGROUND: In 2011, the 82nd Legislature passed SB 115, which established limited liability for spaceflight entities. Civil Practices and Remedies Code, sec. 100A, defines a spaceflight entity to include a manufacturer or supplier of components, services, or vehicles used in spaceflight activities licensed by the Federal Aviation Administration (FAA). The definition of spaceflight entity also includes employees, stockholders, and advisors to the entity.

A spaceflight entity is not liable to any person for a spaceflight participant injury if the participant consented to all risk of injury. The consent agreement must be signed by the spaceflight participant.

Under Government Code, sec. 481.0069 the Texas Economic Development and Tourism Office operates a spaceport trust fund. Among the requirements for spending money from the fund is that a spaceport development corporation have secured at least 90 percent of the funding required for a spaceport project and the spaceport operator have obtained the appropriate FAA license.

Penal Code, sec. 42.01(a)(5), creates a disorderly conduct offense for a person who intentionally or knowingly makes unreasonable noise in a public place.

DIGEST:

CSHB 1791 would amend definitions related to spaceflight activities, limit a spaceflight entity's liability for nuisance claims, amend the informed consent requirements for spaceflight participants, and alter the requirements for spending spaceport trust fund money.

Definitions. The bill would amend the definition of a spaceflight entity under Civil Practice and Remedies Code, sec. 100A to include the owner of the real property, such as a city, that is contracting with the spaceflight entity. Local government entities that hosted spaceflight activities, such as a county, also would be included. The bill would amend other existing definitions and would define additional terms, such as "reentry vehicle."

Limited liability. CSHB 1791 would limit a spaceflight entity's liability for damages resulting from nuisance related to spacecraft testing, launch, reentry, or landing. A person could not seek injunctive relief to stop spaceflight activities. The bill would not prevent breach of contract claims for the use of real property or government actions to enforce valid laws and regulations. The bill also would amend Penal Code, sec. 42 to prevent lawfully conducted spaceflight activities from qualifying as an unreasonable noise leading to a disorderly conduct criminal charge.

The spaceflight participant's signed agreement consenting to risk of injury would be binding on the participant and any of his or her heirs, executors, or representatives.

Spaceport trust fund. The bill would amend Government Code, sec. 481.0069 so a spaceport development corporation had to demonstrate the ability to fund at least 75 percent of a project and have applied for or obtained the appropriate license if required by federal law in order for money to be spent from the spaceport trust fund. The bill also expand the definitions of spacecraft and spaceport in Local Government Code, sec. 507, which deals with spaceport development corporations.

The bill would take effect on September 1, 2013, and would apply only to spaceflight activities that occurred on or after that date.

SUPPORTERS

CSHB 1791 would help recruit the space industry to create a spaceport in

SAY: Texas, where commercial companies may launch spacecraft with payloads such as satellites, supplies for the International Space Station, and civilian astronauts. Texas is a leading candidate for a Space Exploration Technologies (SpaceX) commercial spaceport that would be located near Brownsville, by Boca Chica Beach.

A commercial spaceport would result in significant economic development for the South Texas region in the form of jobs and tourism. In addition, if the launch site were built, SpaceX could invest in related projects, such as manufacturing its rocket engines in South Texas to shorten transport distance.

The bill promotes the development of the commercial space launch industry and a commercial, orbital launch site in Texas by modernizing the statutory framework for spaceflight activities and by clarifying the limitations on liability for spaceflight entities in Texas. Liability protections would be provided for spaceflight entities undertaking spaceflight activities in accordance with Federal Aviation Administration licenses and permits, where required. These spaceflight entities would be protected from a single person obtaining an injunction to stop what would be an extremely capital-intensive activity to build and operate.

The proposal to build a launch site in South Texas has received overwhelming support from area residents, as well as from local and statewide elected officials. Most believe any negative impacts of the project are greatly outweighed by the positive benefits to the region and to Texas. Boca Chica Village, which would be most affected by any noise, has a small, mostly transient population. With launches limited to 12 per year, the bill should not have a major impact on the quality of life for nearby residents.

OPPONENTS SAY: HB 1791 would limit the ability of individuals to file a nuisance claim for damages resulting from certain activities related to space flight. However, the proposed launch site would result in significant noise, especially for nearby residents in Boca Chica Village. As a matter of policy precedent, allowing commercial space entities to be protected from nuisance liability could make it harder for the Legislature to refuse to do the same for other companies in other industries in the future.

NOTES: The committee substitute differs from the bill as filed by:

- adding local government entities that host spaceflight activities, such as counties, to the definition of a spaceflight entity;
- removing limitations on liability from abatements or other injunctive relief and the exceptions to the provision precluding injunctive relief;
- specifying that the limitation on liability from a nuisance applies to the testing, launching, reentering, or landing of a spacecraft;
- changing the requirement for spaceport trust fund money to be used from a requirement for a spaceport development corporation to have secured at least 90 percent of the required funding to the development corporation having demonstrated the ability to fund at least 75 percent of the project.

The companion bill, SB 1636 by Deuell, was passed by the Senate by a vote of 30-0 on April 25.

A related bill, HB 2623 by Oliveira, was passed by the House on April 25. It would restrict access to Boca Chica Beach during spacecraft launches. Another related bill, HB 545 by J. Davis, et al., which would allow a single municipality to create a spaceport development corporation, is on the General State Calendar for April 30.

SUBJECT: Appropriations for miscellaneous claims and judgments

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 24 ayes — Pitts, Sylvester Turner, Ashby, Bell, G. Bonnen, Carter, Crownover, Darby, Giddings, Gonzales, Howard, Hughes, S. King, Longoria, Márquez, Muñoz, Orr, Otto, Patrick, Perry, Price, Raney, Ratliff, Zerwas

0 nays

3 absent — S. Davis, Dukes, McClendon

WITNESSES: For — None

Against — None

On — David Mattax, Office of Attorney General

BACKGROUND: Since the late 1970s, every general appropriations act has contained a rider prohibiting the use of general revenue to pay any judgment or settlement against the state unless the funds are appropriated specifically for such purposes. For fiscal 2012-13, this provision is located in Art. 9, sec. 16.02 of HB 1 by Pitts, the general appropriations act enacted by the 82nd Legislature in 2011.

DIGEST: HB 3188 would appropriate money from various accounts to pay outstanding claims and judgments against the state, which would be listed individually. The bill would appropriate a total of \$7.2 million from the general revenue fund, \$7.3 million from the State Highway Fund, \$64,001 from the Unemployment Compensation Clearance Account, and \$264 out of the Lottery Account. For a claim or judgment to be paid, it would have to be verified and substantiated by the administrator of the special fund or account and be approved by the attorney general and the comptroller by August 31, 2015.

The bill would take effect September 1, 2013.

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NOTES: The companion bill, SB 1654 by Williams, has been referred to the Senate Finance Committee.

SUBJECT: Changes to state assessment program for students in grades 3-8

COMMITTEE: Public Education — committee substitute recommended

VOTE: 11 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty,
K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

WITNESSES: *(On original bill:)*

For — Harley Eckhart, Texas Elementary Principals and Supervisors Association; Laurie Hitzelberger, Dawson Orr, and Ericca Vandagriff, Highland Park ISD; *(Registered, but did not testify:)* Portia Bosse, Texas State Teachers Association; Nan Clayton, League of Women Voters; Monty Exter, Association of Texas Professional Educators; Lindsay Gustafson, Texas Classroom Teachers Association; Janna Lilly, Texas Council of Administrators of Special Education; Ken McCraw, Texas Association of Community Schools; Casey McCreary, Texas Association of School Administrators; Ted Melina Raab, Texas AFT; Jeff Miller, Disability Rights Texas; Andra Penny, Penny Trammel, and Jeff Turner, Coppell ISD; Don Rogers, Texas Rural Education Association; Christy Rome, Texas School Coalition; Guy Sconzo, Humble ISD; Julie Shields, Texas Association of School Boards; Rona Statman, The ARC of Texas; Theresa Trevino and Laura Yeager, Texans Advocating for Meaningful Student Assessment; Paula Trietsch Chaney; Maria Whitsett, Texas School Alliance; Howell Wright, Texas Association of Mid-Size Schools)

Against — Zenobia Joseph; *(Registered, but did not testify:)* Bill Hammond, Texas Association of Business; Justin Yancy, Texas Business Leadership Council)

On — Gloria Zyskowski, Texas Education Agency; Kathi Thomas; *(Registered, but did not testify:)* David Anderson, Texas Education Agency)

BACKGROUND: The 81st Legislature in 2009 enacted HB 3, which replaced the Texas Assessment of Knowledge and Skills (TAKS) with a new series of assessments in grades 3-8. The State of Texas Assessments of Academic Readiness (STAAR) exams were administered for the first time in the

spring of 2012. Students are assessed every year in reading and mathematics. Students in grades 4 and 7 take a writing test; students in grades 5 take a science test; and students in grade 8 take science and social studies tests.

Test items on the STAAR exams in grades 3-8 are developed to measure knowledge and skills based on readiness and supporting standards. The Texas Education Agency (TEA) defines readiness standards as concepts required for students to succeed in the current grade and to be prepared for the next grade. Supporting standards are concepts that are introduced in the current grade but may be emphasized in previous or subsequent years.

DIGEST: CSHB 2836 would eliminate the grade 7 writing and grade 8 social studies STAAR tests, beginning with the 2013-14 school year.

The bill would require all statewide standardized tests to be determined valid and reliable by an entity that was independent of TEA and any other entity that developed the assessment instrument.

TEA would be required to ensure that all statewide standardized tests were designed to primarily assess the state curriculum for the grade level being tested. The tests could assess supporting knowledge or skills from a different subject or different grade level only to the extent necessary or helpful for diagnostic or reporting purposes.

CSHB 2836 would require that STAAR tests be designed so that 85 percent of students in grades 3 through 5 could finish in two hours and 85 percent of students in grades 6 through 8 could finish in three hours. The amount of time allowed for test administration in a single day could not exceed eight hours.

The bill would prohibit the commissioner of education from including student performance on test questions that assess supporting knowledge or skills from being used as a performance indicator of student achievement for the purpose of determining state accountability ratings for districts and campuses.

The bill would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 2836 would take an important step toward aligning public school assessment and accountability with what students know and can do in terms of grade-level standards essential to their success. It would enhance the role of teachers and help nurture a sense of inquiry and love of learning in students.

The bill would reduce the high-stakes nature of STAAR exams for students in elementary and middle school by eliminating tests in grades 7 and 8, requiring TEA to focus test questions on essential curriculum standards for the grade and subject being tested and designing the tests to be completed in a reasonable amount of time. It has become apparent from the first administration of the STAAR tests that adjustments are needed. There is no reason to wait for further administrations of the test to consider changes.

More testing does not equal more rigor. Eliminating the grade 7 writing and grade 8 social studies tests would allow teachers more time to help middle-school students develop their writing skills and learn social studies instead of focusing classroom lessons on test preparation. The tests that would be eliminated are not required under the No Child Left Behind Act, and they only add to an environment of high-stakes testing and “teaching to the test.” Students in grades 3-8 still would take 15 STAAR exams. CSHB 2836 would reduce state testing requirements while still keeping the assessment program in line with federal requirements and preserving the grade 4 writing test, as requested by the education community.

Refocusing the tests primarily to measure grade-level readiness standards would result in deeper instruction, increased student learning, and the development of exams that assess knowledge instead of test-taking skills. This approach also would increase accountability for that grade level and the associated teacher. Holding a teacher accountable for curriculum that is not in that grade’s readiness standards decreases accountability and dilutes the curriculum.

For example, the STAAR science assessment for grade 5 also includes content standards from grades 3 and 4. As a result of all the standards that have to be covered, a fifth grade science teacher testified that she often has as little as one day to cover major concepts. A classroom environment driven by testing limits time for students to engage in more meaningful work, including conducting science experiments or discussing interesting current events, such as the Mars rover .

The STAAR exams still could include questions that measured supporting standards, but those questions would be used only for diagnostic and reporting purposes, not for accountability. That would relieve teachers and students from having to worry as much about those test items so they could focus on the grade-level readiness standards.

Four-hour timed tests are too long for elementary school students. The pressure and build-up to the tests are increasing student stress — some complain of trouble sleeping the night before the test, and more parents are reporting that their children do not enjoy school. CSHB 2836 would ensure that most elementary school students could finish the test in two hours, with most middle schoolers spending no more than three hours on a STAAR test. At the same time, the bill would recognize that some struggling learners may need an entire day to complete the tests. The tests should measure what students know, not what they can complete within a specified time limit.

Texas spends too much on its testing contractor. CSHB 2836 would save \$9.57 million in fiscal 2014-15 by eliminating the two tests, according to the fiscal note. While other provisions in the bill would require the modification of tests, that expense would be minor and well worth it to increase accountability and decrease student stress.

Teachers, students, and parents report that many of the STAAR questions appear to be “trick” questions that do not necessarily measure student knowledge but rather test-taking skills. An independent review of the validity and reliability of the tests would help confirm that they appropriately measured and reflected the attainment of student knowledge and skills in each grade and subject assessed.

In addition, some school districts are using STAAR results to evaluate teachers, even though the tests have not been deemed valid for that purpose. An independent review could determine whether the exams were valid for uses other than to measure student progress. The estimated \$20,000 annual cost for the independent review could help protect Texas from litigation other states have faced over the use of statewide assessments for teacher evaluations.

**OPPONENTS
SAY:**

The STAAR exams are being administered this spring for only the second time, and it is too soon to retreat from the assessments simply because the

exams are more difficult than the TAKS tests. The history of the Texas accountability system is that students have improved their performance as standards have risen.

Eliminating the grade 7 writing exam could mean that more students would start high school without an essential skill they need to be successful. Discontinuing the grade 8 social studies exam could mean that students would not be assessed on this important subject before high school. Texas schools should be doing more, not less, to ensure that students understand history and government so they can become good citizens.

One of the primary goals of the STAAR program is to increase the rigor of the assessments so students have the academic knowledge and skills they need to meet the challenges of the 21st century. Teachers need to make sure students retain content from previous years and are exposed to concepts they will need to succeed in future grades. Emphasizing supporting standards as well as readiness standards on the tests helps strengthen the alignment between what is taught and what is tested for a given course of study.

Placing time limits on the STAAR tests is another way the new testing system has increased rigor over the TAKS program, in which the tests were not timed. There would be an estimated cost of \$90,000 in fiscal 2014 associated with modifying STAAR assessments to fit within certain time limits.

There is no need for the state to spend an estimated \$20,000 per fiscal year to contract with an entity for an independent evaluation of the reliability and validity of STAAR exams. TEA already follows established procedures — including a U.S. Department of Education peer review process — to ensure fairness, accuracy, validity, and reliability of the Texas assessment program. Currently, all state-developed tests meet established reliability and validity guidelines set forth by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.

OTHER
OPPONENTS
SAY:

CSHB 2836 would not go far enough in reducing the high-stakes nature of the STAAR tests for students in elementary and middle school. Students still would be tested a total of 15 times in grades 3 through 8. The bill should eliminate all tests in all grades that are not required under federal

law.

NOTES:

The committee substitute differs from the bill as filed in that it would retain the grade 4 writing test that would have been eliminated in the original.

According to the Legislative Budget Board (LBB), CSHB 2836 would result in a savings of \$9.57 million in fiscal 2014-15. The state would save money from eliminating grade 7 writing and grade 8 social studies exams but would spend \$90,000 to modify remaining tests to fit within the bill's required time limits, as well as \$20,000 for an annual, independent review of the STAAR exams' validity and reliability.

In its analysis of the bill as introduced, the LBB projected savings of \$16.87 million in fiscal 2014-15, but has since lowered its estimate based partly on retaining the grade 4 writing test.

SUBJECT: Increasing penalties for pipeline violations

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 11 ayes — Keffer, Crownover, Burnam, Canales, Craddick, Dale, P. King, Lozano, Paddie, R. Sheffield, Wu

0 nays

WITNESSES: For — James Mann, Texas Pipeline Association; Cyrus Reed, Lone Star Chapter - Sierra Club; (*Registered, but did not testify:* Marty Allday, Enbridge; Rita Beving, Public Citizen; Thure Cannon, Texas Pipeline Association; June Deadrick, CenterPoint Energy; David Matiella; Montealvo; Virginia Palacios, Environmental Defense Fund; William Stevens; David Weinberg, Texas League of Conservation Voters)

Against — (*Registered, but did not testify:* Steve Perry, Chevron USA)

On — Mary “Polly” Ross McDonald, Railroad Commission; (*Registered, but did not testify:* Lindsay Sander, Markwest Energy)

BACKGROUND: Natural Resources Code, sec. 81.0531 allows the Railroad Commission (RRC) to assess an administrative penalty for violating a rule, order, license, permit, or certificate related to safety provisions designed to prevent or reduce pollution.

Sec. 117.051 allows the RRC to assess a civil penalty for violating a safety standard related to the pipeline transport of carbon dioxide or other hazardous liquid, including petroleum, refined petroleum products, or any liquid determined by the United States secretary of transportation to pose a significant risk when transported by pipeline facilities.

Sec. 117.053 makes it a crime to violate intentionally any safety provisions governing the transportation of hazardous liquids by pipeline and provides a penalty for doing so. Sec. 117.054 makes it a crime to intentionally damage or attempt to damage a hazardous liquid pipeline facility and provides a penalty for doing so.

Utilities Code, sec. 121.204 makes it a civil penalty to violate a provision

related to gas pipelines and allows the attorney general to act on behalf of the RRC.

Utilities Code, sec. 121.206 allows the RRC to assess an administrative penalty for a violation of pipeline safety provisions.

Utilities Code, sec. 121.302 makes it a civil penalty for a gas utility to violate a safety provision related to pipeline safety.

Utilities Code, sec. 121.304 allows the RRC to assess an administrative penalty for a gas utility's violation of the Railroad Commission's public safety and pollution provisions.

Utilities Code, sec. 121.310 makes it a crime to willfully violate a provision governing gas pipelines or a gas utility pipeline tax.

DIGEST:

CSHB 1863 would amend various provisions of the Natural Resources Code and the Utilities Code to increase administrative, civil, and criminal penalties for violations of the state's pipeline safety and related statutes. The bill would:

- set the maximum administrative penalties for violating a rule, order, license, permit, or certificate requirement relating to oil and gas safety or the prevention or control of pollution at \$10,000 a day for a violation not related to pipeline safety and to \$200,000 a day for a violation related to pipeline safety and cap the maximum penalty for related violations at \$2 million;
- increase the maximum civil penalty for a violation of safety provisions related to pipeline transportation of carbon dioxide or other hazardous liquids from \$25,000 to \$200,000 for each act of violation and for each day of violation, remove the minimum civil penalty of \$50 a day, and raise the cap for related violations from \$500,000 to \$2 million;
- increase the maximum fine for an intentional violation of safety provisions related to a pipeline transportation of carbon dioxide or other hazardous liquids from \$25,000 to \$2 million, treat multiple offenses as part of a single criminal episode and cap the cumulative total of fines at \$2 million;

- increase the maximum fine for intentionally damaging or attempting to damage a carbon dioxide or other hazardous liquid pipeline facility from \$25,000 to \$2 million, reduce the maximum jail term from 15 years to five years, treat multiple offenses as part of a single criminal episode and cap the cumulative total of fines at \$2 million;
- increase the maximum civil penalty for a gas utility's violation of gas pipeline safety standards from \$25,000 to \$200,000 and the maximum penalty for a related series of violations from \$500,000 to \$2 million;
- increase the maximum administrative penalty for the violation of Railroad Commission safety standards related to pipeline safety to from \$10,000 to \$200,000 for each violation and cap the maximum penalty for a related series of violations at \$2 million;
- set the civil penalty for a gas utility's violations not related to pipeline safety at \$100 to \$1,000, increase the maximum administrative penalty for the violations related to pipeline safety at \$200,000, and cap the maximum penalty for a related series of violations at \$2 million;
- cap the administrative penalty for a gas utility's violation of a gas pipeline standard not related to pipeline safety at \$10,000 a day, and \$200,000 a day for a violation related to pipeline safety, and cap the maximum penalty for related violations at \$2 million; and
- set a criminal penalty under Utilities Code, sec. 121.310 for willfully violating a provision not related to pipeline safety at \$50 to \$1,000, cap the maximum penalty for related violations at \$2 million, and consider multiple pipeline safety offenses to be a single criminal episode as it relates to penalties.

**SUPPORTERS
SAY:**

CSHB 1863 would update 30-year-old penalty rates, bring the penalties in line with federally mandated standards, deter irresponsible behavior of bad actors in the oil and gas industry, increase the Railroad Commission's receipt of federal grant money, and ensure the program's certification.

Texas' penalties for violations of pipeline safety provisions have not changed since 1983. The state should raise the penalty to reflect inflation

and increased oil and gas exploration and transportation in the state. It also should stiffen the penalties for violations that harm the environment, as has been done by other state regulatory agencies, such as the Texas Commission on Environmental Quality and the Public Utility Commission. The increased penalties would reflect the seriousness of the violations. Low penalties may be accepted by bad actors as merely the cost of doing business.

The enactment of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 increased maximum federal penalty amounts to \$200,000 per violation. Texas should increase its pipeline safety penalties to comply with federal standards.

Failing to increase the state's pipeline penalties would decrease the Railroad Commission's federal funding and jeopardize the agency's pipeline safety program. Federal money provides roughly half of the program's funding, and because the state pipeline safety programs are intrastate, they are expected to have penalties consistent with federal guidelines as part of the assessment. Not raising the penalties would reduce the points that the agency receives on its grade from the U.S. Department of Transportation and could even jeopardize the agency's certification and right to regulate the state's pipelines.

CSHB 1863 has wide support from industry members and includes provisions that the RRC and oil and gas industry leaders believe would deter the irresponsible behavior of bad actors and allow the RRC to receive the resources it needs to oversee pipeline safety in the state.

**OPPONENTS
SAY:**

CSHB 1863 contains a number of provisions that would raise the cap on violations not related to pipeline safety. These separate penalties and fees are inappropriately included in this bill and could give the Railroad Commission new authority beyond the updated penalty and fee schedule.

NOTES:

The committee substitute differs from the bill as filed by:

- including a maximum penalty assessment of \$2 million for related pipeline violations;
- removing a provision in the bill as introduced that would have raised the penalty on certain violations not related to pipeline safety to \$25,000 and setting those penalties at \$10,000;
- including a provision that would treat multiple criminal offenses as

- part of the same criminal episode;
- removing a provision that would have raised the minimum penalty for certain civil violations not related to pipelines to \$1,000 from \$100 and the maximum to \$200,000 from \$1,000 and instead maintaining the penalties at a minimum of \$100 and a maximum of \$1,000;
- setting the administrative penalty for a gas utility's violation of a gas pipeline safety standard not related to pipeline safety at \$10,000 a day.

The companion bill, SB 900 by Fraser, was passed by the Senate on April 17 and reported favorably from the House Energy Resources Committee on April 24.

SUBJECT: Electronic delivery of certain documents in a criminal case

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 8 ayes — Herrero, Carter, Canales, Hughes, Leach, Moody, Schaefer, Toth
0 nays
1 absent — Burnam

WITNESSES: For — Jim Jackson and Craig Pardue, Dallas County; (*Registered, but did not testify:* Rebecca Bernhardt, Texas Defender Service; John Dahill, Texas Conference of Urban Counties; Gary Fitzsimmons, Dallas County District Clerk; Mark Mendez, Tarrant County)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 11.07 governs the procedure for filing an application for a writ of habeas corpus after a final conviction in a felony case with a penalty other than death. The clerk of the convicting court must forward a copy of the application to the attorney representing the state by certified mail, return receipt requested, or by personal service.

Art. 11.071 governs procedure for filing an application for a writ of habeas corpus after a judgment imposing the death penalty. The clerk of the convicting court must forward a copy of the application to the attorney representing the state by certified mail, return receipt requested.

Art. 11.072 governs procedure for filing an application for a writ of habeas corpus after an order or judgment of conviction ordering community supervision. The clerk of the court imposing community supervision, at the time an order denying relief or including findings of fact and conclusions of law is entered by the court, must send a copy of that order to the applicant and to the state by certified mail, return receipt requested.

Art. 38.41 governs a certificate of analysis used to establish the results of a laboratory analysis of physical evidence conducted by or for a law enforcement agency in a criminal case. Such a certificate must be provided

to the opposing party by fax, hand delivery, or certified mail, return receipt requested, and any written objection to the certificate filed by the opposing party must be provided to the offering party by fax, hand delivery, or certified mail, return receipt requested.

Art. 38.42 governs an affidavit used to establish the chain of custody of physical evidence in a criminal case. Such an affidavit must be provided to the opposing party by fax, hand delivery, or certified mail, return receipt requested, and any written objection to the certificate filed by the opposing party must be provided to the offering party by fax, hand delivery, or certified mail, return receipt requested.

DIGEST:

HB 996 would allow the following legal documents to be delivered by secure electronic mail, in addition to the current acceptable delivery methods:

- a copy of an application for a writ of habeas corpus that the clerk of the court must send under Code of Criminal Procedure, art.11.07, sec. 3(b), or art. 11.071, sec. 6(c);
- a copy of a court's order in response to a habeas corpus application that the clerk of the court must send under art 11.072, sec. 7(b);
- a copy of a certificate of analysis or a written objection provided under art. 38.41, sec. 4; and
- a copy of a chain of custody affidavit or a written objection provided under art. 38.42, sec. 4.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013, and would apply only to legal documents delivered, filed, or served on or after that date.

**SUPPORTERS
SAY:**

HB 996 would improve efficiency and delivery of certain court documents and would save resources. With secure e-mail delivery, documents would arrive at their destinations faster and with less cost than with traditional delivery methods. Dallas County alone would save about \$40,000 per year in postage costs. Delivering electronic documents would also improve ease of transportation and access. The recipients of these documents could access them on their iPads or Kindles instead of carrying around cumbersome, lengthy paper documents and could perform word searches on them. If a paper copy were desired in addition to the electronic copy, one could be printed by the recipient. The https protocol by which these

documents would be delivered is standard and acceptable for electronic delivery of documents in all branches of federal and state government.

E-filing of all criminal legal documents is a major undertaking and potentially controversial. This bill would allow electronic delivery of a small set of certain non-controversial documents as a first step toward the ultimate goal of allowing e-filing of all criminal legal documents.

OPPONENTS
SAY:

HB 996 should apply to a larger number of documents. Allowing electronic delivery of the small number of documents specified in this bill is a good first step, but Texas needs to move toward e-filing of criminal cases and a broader range of legal documents than the small number of documents affected by this bill.

NOTES:

The companion bill, SB 354 by West, passed unanimously out of the Senate April 4 on the local and uncontested calendar and was referred to the House Committee on Criminal Jurisprudence on April 8.

SUBJECT: Repealing and adjusting certain unemployment taxes

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 8 ayes — J. Davis, Vo, Bell, Isaac, Murphy, Perez, E. Rodriguez, Workman
0 nays
1 absent — Y. Davis

WITNESSES: For — (*Registered, but did not testify*: Kathy Barber, National Federation of Independent Business - Texas; Brent Connett, Texas Conservative Coalition; Cathy Dewitt, Texas Association of Business; James LeBas, Texas Oil and Gas Association)

Against — None

On — Randy Townsend, Texas Workforce Commission

BACKGROUND: The Texas Workforce Commission (TWC) has several interrelated funds related to worker skill development. These funds include the Employment and Training Investment Assessment (ETIA) holding fund, the training stabilization fund, which has never been funded, and the skills development fund.

Labor Code, ch. 204, subch. G establishes the ETIA, which is one of the four components of the unemployment tax assessed to employers. Funds from the ETIA are held in the ETIA holding fund and are eventually transferred to skills development fund, unless the unemployment compensation fund is below its legally required financial floor.

Sec. 204.123(b) requires TWC to transfer from the ETIA holding fund to the compensation fund “as much of the amount in the holding fund as is necessary to raise the amount in the compensation fund to 100 percent of its floor, up to and including the entire amount in the holding fund.” Since 2009, all funds from the ETIA holding fund have been transferred to the unemployment compensation fund, leaving no funds available for transfer

to the skills development fund.

Since fiscal 2010, the Legislature has funded TWC's skills development program out of general revenue. Both the House and Senate versions of the fiscal 2014-15 general appropriations act would continue this practice, recommending funding for skills development for fiscal 2014-15 of about \$48.9 million in general revenue.

DIGEST:

HB 939 would:

- abolish the ETIA and eliminate the ETIA holding fund and the training stabilization fund;
- strike language that allows the skills development fund to be funded from transfers from the ETIA holding fund;
- disburse the unexpended balances of the ETIA holding fund and the training stabilization fund; and
- adjust the employer's initial unemployment insurance contribution rate and replenishment tax rate.

Abolish ETIA holding fund and disburse fiscal 2014-15 beginning balance. The bill would require that up to 15 percent of the ETIA holding fund and the training stabilization fund balances be allocated to workforce development or the administration of the Texas Unemployment Compensation Act. The remaining funds, at least 85 percent of the fund balances, would be credited against the amounts owed by an employers' unemployment insurance contribution in proportion to the amount of the employment and training investment assessment paid by those employers.

Adjustments to initial contribution rate and replenishment tax rate. Effective January 1, 2014, HB 939 would:

- modify the calculation of an employer's initial contribution rate by striking language providing a reduction of one-tenth of 1 percent from the rate established for a major employer group, and increasing the maximum amount paid from 2.6 percent to 2.7 percent; and
- eliminate the 0.1 percent reduction to the replenishment tax rate provided in Labor Code, sec. 204.062.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

HB 939 would result in the return at least \$77.5 million to Texas employers in a one-time disbursement to wind down the ETIA holding fund. According to the Legislative Budget Board (LBB), the fiscal 2014-15 beginning balance of the ETIA holding fund is \$91.2 million. HB 939 would ensure that at least 85 percent (\$77.5 million) of those funds were returned to Texas businesses.

Texas businesses would put those funds to immediate economic use. There is no reason that the state should be maintaining such large cash balances when the funds, in the hands of the private sector, promote the state's economic growth.

While opponents of HB 939 may argue that ETIA funds should be used to shore up the unemployment compensation fund, the compensation fund is not at risk. Texas employers pay the fund's cost, and they would rather have a tax credit now. If there is a need to enhance the balance of the unemployment compensation fund in the future, employers are willing to face a tax increase at that time.

HB 939 would increase transparency within the unemployment compensation tax system by abolishing the ETIA as part of a larger effort to increase truth in budgeting. The ETIA has not been used for its primary purpose — workforce skills development — since 2009. Eliminating the ETIA would reduce from four components to three the number of items an employer saw on an unemployment tax bill. All three remaining assessments are directly related to the unemployment compensation fund and debt obligations associated with that fund.

To make up for the loss of ETIA revenue, HB 939 would adjust both the replenishment tax rate and the new employer's tax rate so that the amount collected by those taxes would be roughly the amount that would have been collected by the ETIA, or about \$84.4 million per year.

Texas employers should not be penalized for the way the state does its accounting. The distribution to the employers of the ETIA holding account balance is not the reason for the bill's cost; it is because the ETIA holding account is a general revenue dedicated account, which the comptroller uses for certification. Those funds are transferred every September into the unemployment trust fund, which is not subject to certification. After the beginning balance of the fiscal 2014-15 ETIA holding fund was disbursed and the ETIA and affiliated funds were abolished, the bill would become

revenue neutral, with tax adjustments making up for the abolishment of the ETIA flowing directly into the unemployment trust fund.

OPPONENTS
SAY:

The one-time disbursement of \$77.5 million to Texas employers would be ill-advised during a time in which Texas is still experiencing high unemployment and TWC must repay bonds issued to cover unemployment compensation claims during the worst of the recession. While it might make sense to abolish the ETIA and replace the assessment with adjustments to other taxes to increase transparency, disbursing the beginning fiscal 2014-15 ETIA fund balance to employers would not be the best use of the funds. Rather, these funds should be spent paying off debt and shoring up the unemployment compensation fund. Doing so would help ensure that Texas employers were not hit with higher-than-expected unemployment compensation tax bills during the next economic downturn.

According to the LBB's fiscal note, HB 939 would remove about \$260 million from the funds available to the comptroller to certify the budget. This could reduce the amount of funding available for appropriation to fund vital state priorities, including water infrastructure, transportation, education, and health and human services.

NOTES:

According to the fiscal note, HB 939 would make unavailable for fiscal 2014-15 budget certification purposes about \$260 million, comprising the fiscal 2014-15 beginning balance of \$91.2 million in the ETIA holding account (general revenue account 5128) and the \$84.4 million per year that no longer would be collected.

SUBJECT: Workers' compensation for temporary employees

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Villalba, Walle, Workman
0 nays

WITNESSES: For — Tammie Coffee, Affiliated Foods, Inc.; Chase Hales, Plains Dairy & Affiliated Foods, Inc.; Greg Meador, Plains Dairy; (*Registered, but did not testify*: Pamela Bratton, Society for Human Resource Management Texas State Council; Cathy Dewitt, Texas Association of Business; Fabiola Flores; Lee Loftis, Independent Insurance Agents of Texas; Matt Matthews, Texas Association of Staffing)

Against — (*Registered, but did not testify*: John Davis and Abel Trevino)

On — Rod Bordelon, Texas Department of Insurance - Division of Workers Compensation; (*Registered, but did not testify*: Amy Lee, Nancy Moore, Texas Department of Insurance; Alan Tysinger)

BACKGROUND: Labor Code, sec. 406.034 (Employee Election) generally describes the conditions under which an employee may waive coverage under an employer's workers' compensation insurance policy.

Labor Code, sec. 408.001 (Exclusive Remedy; Exemplary Damages) generally provides that employees covered by an employer's workers' compensation insurance have workers' compensation benefits as their exclusive remedy in the case of injury.

Non-subscribing companies are companies that have opted not to purchase workers' compensation insurance.

DIGEST: HB 1762 would provide that if a temporary employment service elected to obtain workers compensation insurance, the client of the temporary employment service and the temporary employment service would be subject to Labor Code provisions governing employee election (sec. 406.034) and exclusive remedy (sec. 408.001).

HB 1762 would provide that a certificate of insurance coverage showing that a temporary employment service maintained workers' compensation insurance was proof of workers' compensation insurance coverage for the temporary employment service and the client of the service with respect to employees of the temporary employment service assigned to the client. The bill would require the state and its political subdivisions to accept the certificate as proof of workers' compensation coverage.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

HB 1762 would close a gap in the unemployment compensation system. Currently, employees of a temporary employment agency who are covered by the agency's workers' compensation insurance and injured on the job while assigned to a non-subscribing company can receive workers' compensation benefits while also suing the non-subscribing company. In effect, these workers, unlike every other worker in the state, have the opportunity to be paid twice for their injury.

The bill would reduce cost and exposure to liability borne by non-subscribing client companies. It would allow the temporary agencies and non-subscribing companies to stop trying to develop complex contractual arrangements in the hopes of preventing temporary employees from claiming workers' compensation and also suing the non-subscribing companies. Such efforts are costly and cumbersome, and in the end they do not always withstand a court challenge.

The certificate of coverage described by HB 1762 would ease administration and provide assurance to private and public sector clients of a temporary agency that the temporary agency's employees were covered by the agency's workers' compensation insurance.

**OPPONENTS
SAY:**

HB 1762 is unnecessary. The number of temporary workers assigned to non-subscribing companies who are injured on the job and seek remedies through both the workers' compensation system and the courts is extraordinarily small.

SUBJECT: Creating the Judicial Branch Certification Commission

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Lewis, Farrar, Farney, Gooden, Hernandez Luna, Hunter, K. King, Raymond, S. Thompson
0 nays

WITNESSES: For — (*Registered, but did not testify*: Berta Allen, Kathy Burrow, Dennis Cromwell, Keith Oakley, Scott L Thomas, and Andrew Watson, Texas Process Servers Association; Amy Beard, Professional Civil Process of Texas; Guy Herman, Texas College of Probate Judges; Eric Johnson and Carl Weeks, Texas Process Server Review Board)

Against — Dana McMichael, Civil Process Servers Association of Texas; Tod Pendergrass

On — Jimmy Evans, Texas Court Reporters Association; Wallace B. Jefferson, Supreme Court of Texas; David Slayton, Office of Court Administration; (*Registered, but did not testify*: Katie Bond, Office of Court Administration)

BACKGROUND: Government Code, ch. 72, established the Office of Court Administration (OCA). The OCA supports the courts of Texas under the direction of the Supreme Court. It collects data, runs programs, awards grants, and otherwise assists the Supreme Court to administer the judicial branch of the Texas state government.

Government Code, ch. 52 created the Court Reporters Certification Board, registers and certifies court reporters in Texas. Court reporters must pass a proficiency test. The board is administratively attached to the OCA.

Government Code, ch. 111 established the Guardianship Certification Board, registers and certifies non-attorney applicants for the provision of guardianship services. These applicants must pass a certification exam. The board is administratively attached to the OCA.

The Supreme Court established rules 103 and 536(a) under the Rules of

Civil Procedure, and made it possible for "any person certified under order by the Supreme Court to serve civil process." The Process Servers Review Board certifies process servers and approves training courses.

Government Code, ch. 57 established the Licensed Court Interpreters Advisory Board, which licenses, tests, and regulates language interpreters who provide services to Texas courts. The board is administratively attached to the Texas Department of Licensing and Regulation.

DIGEST:

HB 3790 would add Government Code, ch. 154 to create the Judicial Branch Certification Commission. It would abolish the Court Reporters Certification Board, the Guardianship Certification Board, Process Server Review Board, and the Licensed Court Interpreter Advisory Board. The bill would fold their regulatory functions, powers, and cases into the new commission. The commission would be attached to the Office of Court Administration (OCA) and would operate under the OCA's executive director.

Judicial Branch Certification Commission. HB 3790 would establish the Judicial Branch Certification Commission. The commission would consist of a nine-member board appointed by the Supreme Court of Texas. Five of the members would be judges and four would be public members. The Supreme Court would appoint the presiding officer. The members would serve staggered six-year terms. The bill would establish conflict-of-interest rules – preventing, for instance, lobbyists who represent a profession regulated by the commission from serving on its board. The commission's board would meet at least quarterly. The commission would be attached to OCA and the OCA director would administer and enforce the commission's programs and perform any duty assigned by the commission and law.

The commission would undergo Sunset review, but would not be subject to abolishment.

Regulatory powers of the commission. HB 3790 would allow the Supreme Court to adopt rules regulating court reporters, guardians, court interpreters, and process servers. The bill would provide that a rule or a form adopted by the Supreme Court or the Texas Commission of Licensing and Regulation related to one of the professions regulated by the bill would remain in effect until altered by the Supreme Court. HB 3790 would allow the commission to waive certain application prerequisites for

certain applicants licensed in other states.

The commission would develop and recommend to the Supreme Court rules and professional codes of conduct for the regulated professions, set fees to cover the costs of administering the programs, and, with consultation from appropriate advisory boards, establish qualifications for certification, registration, or licensure. The commission would be empowered to conduct criminal background investigations of applicants.

The bill would permit the commission to require applicants for certification, registration, or licensure to pass an examination developed and administered by the commission or a contractor, require continuing education, and appoint necessary committees. A person who took an examination would have to be notified of the results within 30 days.

The bill would require the commission to maintain a record of complaints, including:

- the name of the complainant;
- date;
- subject matter;
- names of person contacted in relation to the complaint, a summary of results; and
- an explanation of the reason the file was closed if closed without action other than investigation.

The bill would require the commission to encourage alternative dispute resolution procedures to assist in the resolution of disputes under its jurisdiction.

Enforcement powers. HB 3790 would authorize the commission to issue subpoenas for the production of evidence or the attendance of witnesses. The OCA would be allowed to issue cease-and-desist orders for violations. The commission would be allowed to deny, revoke, suspend, or refuse to renew a certification, registration, or license for a violation of an applicable rule or law. It would be allowed to reprimand a regulated person for rule or law violations. The commission would be allowed to issue administrative penalties of up to \$500 per violation, with each day a violation continues being a separate violation.

The commission would be required to give regulated persons notice and a hearing before imposing a penalty. The Supreme Court would adopt rules

concerning appeals.

Advisory boards. The bill would allow the commission to establish advisory boards to advise the commission on policy and regulation, including certification, registration, and licensing. These boards would meet at least yearly. The bill would establish four boards to advise the commission: the Court Reporters Certification Advisory Board, the Guardianship Certification Advisory Board, the Process Server Certification Advisory Board, and the Licensed Court Interpreter Advisory Board. The Supreme Court would appoint at least five members to each board, except it would appoint at least seven to the court reporters board. The court would appoint the presiding officer and the board's members would serve staggered six-year terms.

Court reporters. HB 3790 would abolish the Court Reporters Certification Board and transfer its regulatory duties and powers to the commission. Court reporters would be certified by the the Judicial Branch Certification Commission. Reporters who were certified before September 1, 1983 would be allowed to retain certification and keep it in continuous effect. The bill would continue the requirement that court reporting firms be registered. The bill also would continue the offense of practicing short hand reporting in violation of the law. The offense would continue to be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Guardians. HB 3790 would abolish the Guardianship Certification Board and transfer its regulatory duties and powers to the commission. The commission would be authorized to issue certificates for the provision of guardianship services.

Process servers. HB 3790 would establish the Process Server Certification Advisory Board as an advisory board of the commission. It would require the OCA to collect fees for process server certification and would direct those fees to the support of regulatory programs for process servers, guardians, and court reporters. Existing rules adopted by the Supreme Court to certify process servers would remain in place until the court altered them.

Court interpreters. HB 3790 would transfer to the commission the Licensed Court Interpreter Advisory Board from the Texas Department of Licensing and Regulation. The bill would preserve the requirement for a

license to be a court interpreter. The bill would require the OCA to conduct qualifying examinations. The bill also would preserve the offense of interpreting in violation of either a rule or a law. Such an offense is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Conforming changes. HB 3790 would make conforming changes to the Code of Criminal Procedure, Estates Code, Government Code, Human Resources Code, and Tax Code, largely striking references to existing regulatory agencies and replacing them with references to the Judicial Branch Certification Commission.

Effective date. The bill would take effect September 1, 2014, except as otherwise provided. The Supreme Court would start adopting rules, procedures, and forms for the commission and its advisory committees on September 1, 2013.

SUPPORTERS
SAY:

HB 3790 is a good government bill. It would streamline some state regulatory functions by abolishing four state agencies and fold their functions and powers into a single commission. This streamlined process would allow the Supreme Court to better regulate these professions. Properly overseeing certifications is important because these professions affect substantive rights and access to justice.

This would provide administrative efficiency because it would mean four fewer state agency heads, fewer necessary personnel to register, certify, and track industry participants, and savings on office and information technology support. According to the fiscal note, the OCA would be able to absorb these functions at no additional cost to the state.

It is appropriate to regulate process servers. The Supreme Court created the Process Server Review Board in 2005 after private process servers complained that Texas counties differed in how they regulated process servers. Some required training and other criteria, while others required only registration with a court. This patchwork of regulations made it difficult for process servers to practice over a multi-county area, let alone statewide. The creation of the board met the call from industry for standardization. Its certification procedures reduce discrepancies and improve standards.

Regulating process servers also is a public safety issue. They look for

people in their homes and places of business to serve documents. People whose profession requires searching and entering these places should have to meet certain minimum standards to ensure public safety.

The Supreme Court has the ability to regulate judicial branch entities and actors. Tex. Const. art. V., sec. 31 (a) and (b) grant the Supreme Court the power to regulate process servers as an extension of its constitutional duty to oversee the efficient and uniform administration of justice in various courts. Government Code, sec. 74.007 grants the court the power to appoint members to committees necessary or desirable for the efficient administration of justice. Finally, service of process has been regulated by the Texas Rules of Civil Procedure, rules 103 and 536(a). Changes to those rules created the Process Servers Review Board and they have withstood court challenge.

OPPONENTS
SAY:

Process servers do not need to be regulated. The government should regulate an industry only for public health and safety reasons. No one in Texas is physically harmed by a process server delivering documents. There are few consumer complaints against process servers. Attorneys, the group that hire process servers, are not asking for them to be regulated. Finally, if public safety or consumer protection were the driving force behind regulation, then the court's current rules would accomplish this purpose by not allowing non-certified process servers to deliver documents.

Texas should follow the model many states and the federal system uses for regulating process servers. They allow any "disinterested adult" to serve process. Texas should follow this same established and common standard rather than requiring certification, expensive training, and other criteria.

The bill would be an unconstitutional method of regulating process servers. According to the critical constitutional doctrine of separation of powers, it is up to the Legislature to make general laws, such as regulations of an industry or a profession. Currently, process servers are certified by an agency created by a rule of the Supreme Court not by a legislatively enacted statute. All HB 3790 would do is transfer the functions of this agency to another body. It would not provide a statutory basis for regulation. If the Legislature sought fit to regulate process servers it either would have already do so, or would pass a substantive law this session.

NOTES:

The companion bill, SB 966 by West, was passed by the Senate on April 9 by a vote of 29-2 (Nelson, Nichols).

The committee substitute differs from the bill as filed by:

- creating the Process Server Certification Advisory Board;
- permitting the Supreme Court to allow the commission to adopt rules deemed appropriate by the court;
- requiring the commission to adopt rules in consultation with its advisory boards; and
- requiring certain rules of evidence and procedure for commission hearings regarding possible sanctions against a regulated person or entity.

SUBJECT: Exempting prizes of \$50 or less from the \$2,500 cap on bingo prizes

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 6 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez

0 nays

3 absent — Miles, Price, S. Thompson

WITNESSES: For — Steve Bresnen, Bingo Interest Group; Philip Sanderson, Texas Charity Advocates; (*Registered, but did not testify:* Stephen Fenoglio, Texas State Veterans of Foreign Wars, River City Bingo Charities; Steven Hieronymus, Trend Gaming Systems LLC; Mark Gottschalk)

Against — Rob Kohler, Texas Baptist Christian Life Commission

On — (*Registered, but did not testify:* Sandra Joseph, Texas Lottery Commission, Charitable Bingo Division)

BACKGROUND: Occupations Code, sec. 2001.420 sets limits on prizes that can be awarded in charitable bingo games. A single game may not have a prize of more than \$750. On a single bingo occasion, prizes cannot total more than \$2,500, except that prizes from pull-tab bingo games do not count toward this cap.

DIGEST: HB 394 would exempt bingo games that award prizes of \$50 or less from the cap of \$2,500 on bingo prizes awarded at a single occasion.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY: HB 394 would treat the small prizes awarded in traditional bingo games in the same way as the small prizes awarded by pull-tab bingo by excluding them from the overall prize limit. The state already has made an exception to the prize limit cap, and HB 394 would be consistent with that policy by exempting another set of low-value prizes.

By exempting small prizes from the prize-cap amount, the bill would allow charities to offer more low-stakes games so more players could win. This would increase player interest and fun, translating into more funds for charitable purposes and, according to the fiscal note, up to \$383,000 in additional state revenue through the end of fiscal 2015.

HB 394 would not expand bingo or authorize any type of game or device not currently allowed. The current limit of \$750 per game would remain.

OPPONENTS
SAY:

Prize amounts, no matter how small, should not be exempted from the aggregate cap on prizes. When this happens, the cap no longer functions as the upper limit on prizes.

NOTES:

The companion bill, SB 282 by Van de Putte, has been referred to the Senate State Affairs Committee.

According to the fiscal note, HB 394 would increase the bingo prize revenue deposited in the general revenue fund through the end of fiscal 2015. If the bill took immediate effect (June 1, 2013 according to the Legislative Budget Board's analysis), the positive impact is projected to be \$383,000. If the bill took effect September 1, 2013, the positive impact is projected to be \$341,000.

SUBJECT: Requiring TDCJ policy to encourage volunteer, faith-based organizations

COMMITTEE: Corrections — favorable, without amendment

VOTE: 7 ayes — Parker, White, Allen, Riddle, Rose, J.D. Sheffield, Toth
0 nays

WITNESSES: For — Doots. B Dufour, Diocese of Austin; Vikrant Reddy, Texas Public Policy Foundation; Ana Yanez Correa, Texas Criminal Justice Coalition; *(Registered, but did not testify: Yannis Banks, Texas NAACP; Rebecca Bernhardt, Texas Defender Service; Cathy Dewitt, Texas Association of Business; Cindy Eigler, Texas Interfaith Center for Public Policy)*

Against — None

On — *(Registered, but did not testify: Rick Thaler, Texas Department of Criminal Justice)*

BACKGROUND: Government Code sec. 501.009 requires the Texas Department of Criminal Justice to actively encourage volunteer organizations to provide certain types of education, treatment, and rehabilitation programs for incarcerated offenders. Sec. 501.009 lists types of programs that include literacy and education, life skills, job skills, parent-training, drug and alcohol rehabilitation, support programs, arts and crafts, and other programs determined to reduce recidivism and to help inmates transition to society.

DIGEST: HB 2811 would require TDCJ to adopt a policy requiring each warden to identify volunteer organizations that provide programs to incarcerated offenders. The policy would require each warden to actively encourage volunteer and faith-based organizations to provide the programs currently listed in Government Code sec. 501.009.

The policy would require each warden to submit a report on these efforts to the Texas Board of Criminal Justice each year by December 31. The report would include a summary of the programs provided to inmates and the warden's actions to identify volunteer and faith-based organizations willing to provide programs and actions taken to encourage organizations

to provide them.

The bill would take effect September 1, 2013, and TDCJ would have to adopt the policy required by the bill by December 1, 2013.

**SUPPORTERS
SAY:**

HB 2811 would formalize and help expand TDCJ's current work with volunteer organizations, which could cost-effectively reduce offender recidivism and enhance public safety.

Currently, TDCJ allows many volunteer and faith-based organizations to offer programs in correctional facilities. The programs include literacy, job skills, drug and alcohol rehabilitation, arts and crafts, and more. The programs can have a significant, positive impact on offender rehabilitation, education, and skill acquisition.

HB 2811 would recognize the importance of these efforts by formalizing them through an agency policy. Such a policy would ensure wardens made conscious efforts in this area and were held to the same expectations concerning their efforts to involve volunteer and faith-based organizations within their facilities.

The annual report required by the bill would detail the efforts at each unit and would facilitate the sharing of strategies, ideas, and information, which could lead to increased volunteer involvement. A report also would give policy makers and the public information about community involvement at each unit.

With the efforts made under HB 2811, the number and scope of these programs could increase. More offenders could gain the necessary skills to keep from reoffending and to successfully reintegrate into society, making the public safer.

Using these cost-free programs leverages private resources to help the state. When offender recidivism is reduced, the state saves the money it would have spent to handle an offender who committed another crime. Increased volunteer involvement in prisons could translate into additional resources for offenders during their reentry into society.

HB 2811 would not burden TDCJ, and the bill's requirements could be met with existing resources. TDCJ already posts on its website information by unit about volunteer initiatives, and HB 2811 would fit

easily into those efforts. TDCJ staff always are working to process volunteer applications efficiently and in a timely manner and would continue to do so if HB 2811 led to an increase in applications.

**OPPONENTS
SAY:**

It might be difficult for TDCJ to implement HB 2811 without additional resources. The bill could lead to an increase in the number of volunteer applications, and TDCJ could struggle to process them in a timely manner. Volunteers could become discouraged and move on to other opportunities.

SUBJECT: Expanding and extending CDA authority

COMMITTEE: Transportation — committee substitute recommended

VOTE: 8 ayes — Phillips, Martinez, Y. Davis, Fletcher, Guerra, Harper-Brown, Pickett, Riddle

2 nays — Burkett, Lavender

1 absent — McClendon

WITNESSES: For — C. Brian Cassidy, Alamo RMA, Cameron County RMA, Camino Real RMA, Central Texas RMA, Grayson County RMA, North East Texas RMA; Duane Gordy, Community Development Education Foundation; Mike Heiligenstein, Central Texas Regional Mobility Authority; (*Registered, but did not testify:* Brent Connett, Texas Conservative Coalition; David Garcia, Cameron County Regional Mobility Authority; Daniel Gonzalez, Texas Association of REALTORS; Beth Ann Ray, Austin Chamber of Commerce; Vic Suhm, Tarrant Regional Transportation Coalition)

Against — Terri Hall, Texas TURF; Jeff Judson, San Antonio Tea Party; Pat Dossey; Don Dixon; Robert Morrow; (*Registered, but did not testify:* Dennis Edwards, TexasConservatives.org; Dale Huls, Clear Lake Tea Party; Teresa Beckmeyer; Bill Molina)

On — Michael Morris, North Central Texas Council of Governments; Phil Wilson, Russell Zapalac, Texas Department of Transportation

BACKGROUND: Comprehensive development agreements (CDAs) are contracts with private entities to finance, construct, maintain, operate, or expand a tolled highway project. Current law grants TxDOT and Regional Mobility Authorities (RMAs) the authority until 2015 to enter into a CDA only for specific projects listed in statute.

DIGEST: CSHB 3391 would increase the number of projects that TxDOT could design, develop, finance, construct, operate, or maintain by entering into a CDA. It also would extend to 2017 from 2015 the authority to enter into a CDA for other projects already designed in state law.

Projects that would become eligible for CDA agreements until 2017 under the bill include:

- SH 183 Expanded (SH 114 and Loop 12)
- I-35/US 67 Gateway;
- I-35 E (SH 183 to Dallas North Tollway);
- Loop 9;
- US 181 (Harbor Bridge);
- Loop 49;
- Loop 375 Border Highway;
- Loop 1604 (I-35 to SH 16);
- Northeast Parkway (El Paso).

Projects that the bill would extend authority to develop to 2017 include:

- Grand Parkway;
- I-35 E managed lanes;
- North Tarrant Express Segments 3A and 3B;
- North Tarrant Express Segments 3C and 4;
- SH 183, from SH 121 to I-35E;
- US Highway 290 (Harris County);
- SH 288;
- South Padre Second Causeway;
- Outer Parkway (US77/83 to FM 1847);
- US 183; and
- Loop 1 /MOPAC FM 734 to Cesar Chavez.

TxDOT CDA authority. The bill would revise provisions governing TxDOT's authority to enter into CDAs. Such projects would, with some exceptions, have to obtain environmental clearance for the project or its initial scope by August 31, 2017. The bill would authorize TxDOT to enter into a CDA for a nontolled state highway improvement authorized by the Legislature and to combine two or more projects in a CDA.

RMAs. The bill would allow an RMA formed by a county with a population greater than 700,000 that bordered Mexico (El Paso and Hidalgo counties) to enter into a CDA for the Hidalgo County Loop Project, the International Bridge Trade Corridor Project, and projects associated with commuter rail.

Termination for convenience. The bill would revise termination for convenience provisions to require that a CDA under which a private participant received the right to operate and collect revenue from a toll project would have to contain a provision authorizing TxDOT, a regional tollway authority, an RMA, or a county to terminate the agreement and purchase the participant's interest and property associated with the project.

The contract would have to specify the price to purchase rights to the project at specific intervals from the date the toll project opened. The purchase price would be the lesser of the price stated for the interval or the greater of amounts specified in the CDA, plus:

- fair market value of the private participant's interest, or
- outstanding debt specified in the CDA.

The price for termination could be adjusted to reflect changes in the agreement stemming from a required expansion or reconstruction not provided for in the original agreement.

A request for proposals for a CDA would have to include the proposed price breakdown and would be part of the evaluation scoring matrix. A private participant would have to provide notice before a new price interval took effect, and the contracting entity would have to respond with a statement of its intent on whether or not to exercise the option to purchase.

Effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 3391 would enable the state, regional mobility authorities (RMAs), and some border counties to enter into CDAs with private entities for the development of specific tolled highway projects. The bill would add CDA authority for some projects and extend this authority by two years for others. The transportation projects designated in the bill were each identified by local entities as critical to addressing pressing infrastructure needs. Each of the projects listed is very unlikely to receive financing in the near term if restricted to development with currently available public resources.

Private financiers can bring abundant resources to toll projects that are unavailable to the public sector. Many private toll road developers have international asset and capital bases that they may leverage to finance the initial acquisition and construction of toll facilities. Private toll road development agreements may bring the state more initial income in the form of concession agreements, provide the state a portion of ongoing revenue collections, and relieve the state from the responsibility of building or maintaining the road.

By leasing the rights to develop and operate toll projects to private entities, the state shields itself from the unavoidable risks associated with these projects. These risks are inherent in every aspect of toll development. Estimates of initial construction costs, maintenance and operation costs, the number of drivers willing to pay tolls, and the price drivers would pay to use toll roads are all unknown values that determine the ultimate profitability of the project.

Miscalculations in project planning and market studies could cause revenue forecasts to fall short, creating risks of project failure and bankruptcy. Leasing toll projects to private developers eliminates such risks for the state and provides revenue in the form of concession fees and other contractually specified returns. States may refuse to aid private toll operators who lease the rights to develop unprofitable toll roads.

Private developers often maintain and operate toll facilities more efficiently and consistently. Private entities have a vested interest in maintaining toll roads because deteriorating road quality affects the number of drivers using the road and the amount of revenue collected by the tolling authority. State maintenance of roads, by contrast, is subject to the vagaries of politics and the legislative appropriations process. Money may be directed to new road construction and away from maintenance and operation, and such diversions from maintenance could result in declining road quality over time.

In response to public perceptions of abuse, the Legislature adopted key protections to ensure that CDA contracts are in keeping with public interests. For instance, a toll entity is barred from entering into a CDA unless the attorney general deems the proposed agreement legally sufficient. The Legislature also has adopted rules restricting so-called “noncompete” clauses. Under current law, no CDA agreement can prevent the construction of a transportation project, and compensation agreements

are limited to a loss of toll revenue attributable to construction within a certain radius of the project.

CSHB 3391 also would add further protections by clarifying law on requirements for termination for convenience clauses. Under the bill, any CDA would have to include a provision authorizing a public entity to repurchase the rights to the project. This would act as a safeguard against unforeseen developments by allowing the public to buy back the project at a pre-specified price.

**OPPONENTS
SAY:**

CSHB 3391 would continue the flawed practice of turning over valued public assets to the private sector. The value of the transportation assets the state loses by leasing out development rights for toll roads usually exceeds the benefits it might enjoy as a result of ceding such rights. The capacity of private financing to minimize the risks inherent in developing a toll road is overstated. Private developers are not likely to gamble with toll roads that they do not expect to yield significant net profits over their lifetime, and it is unlikely that the state could deny credibly financial or contractual assistance to a private interest operating a failing tollway. Toll projects that do not expect to yield generous returns on investment are not sought as aggressively by private interests.

Because roads are built only at great public expense and are built on rights-of-way often acquired through eminent domain, and because roads act as critical public assets by giving motorists access to important destinations, the state is deeply invested in their continued, viable operation. As a result, the notion that the state simply could deny requests for intervention or assistance that, if withheld, could lead to the failure and closure of a tollway is highly questionable. If a private company leased a toll project that failed to be profitable, the state would be compelled to take on the expense of buying out the private entity and assume maintenance of the road or to amend the contract to include terms more favorable to the private interest.

CDAs have a well-documented record of leading to bad outcomes for the general public. CDAs essentially are state-sanctioned monopolies that receive the authority for half a century to tax customers for what is a public good. Many CDAs are structured with non-compete clauses that actually penalize the state for making improvements to public, non-tolled roads in the vicinity that could draw drivers away from the project. This basically holds the best interests of taxpayers hostage to a private entity

for the foreseeable future.

The best course for toll road development would be to restrict the option of development only to public tolling entities. Public tolling entities share pressures to maintain toll roads as time passes, and they have more flexibility and self-determination in decision-making than does the state. Public tolling entities also provide for the recirculation of revenue from toll roads into the maintenance of local transportation infrastructure. Successful public toll roads become future engines of transportation funding, while privately funded toll roads export revenue to shareholders.

Toll roads are an unfair form of double-taxation and impose exorbitant fees on users who are compelled by worsening congestion on public non-tolled roads to pay the toll. The bill would be yet another measure that avoids addressing the core issue facing the state — insufficient funding for transportation projects. The state needs to address the core issue facing highway funding and take action to secure the funding for roads that the state needs.

OTHER
OPPONENTS
SAY:

CSHB 3391 would continue the vexing practice of authorizing CDAs for specific projects listed in statute. This puts the Legislature in the position of choosing which projects are best suited for development as a CDA during the legislative session. The Legislature is ill-equipped to make these types of specific, project-level decisions. Instead of continuing the practice of designating specific projects, it should adopt a statewide framework that allows for ongoing decisions about which projects are most suitable for development as CDAs.

NOTES:

The companion bill, SB 1730 by Nichols, was passed by the Senate on April 16 and reported favorably as substituted by the House Transportation Committee on April 25.

The introduced version of HB 3391 did not list any specific CDA projects but would have placed a limit on the CDA projects that TxDOT could enter into at 10 per biennium.

SUBJECT: Competition for government contracts regardless of group affiliation

COMMITTEE: Government Efficiency and Reform — favorable, without amendment

VOTE: 6 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Taylor, Scott Turner
1 nay — Vo

WITNESSES: For — Jon Fisher, Associated Builders and Contractors of Texas; Gary Roden, (*Registered, but did not testify*: Kathy Barber, NFIB Texas; Jack Baxley, Texo Construction Association; Michael Chatron, AGC Texas Building Branch; Cathy Dewitt, TAB; Perry Fowler)

Against — Michael Cunningham, Texas State Building and Construction Trades Council; Rick Levy, Texas AFL-CIO; (*Registered, but did not testify*: Leonard Aguilar and Chad Tomlin, Southwest Pipe Trades; Joseph Arabie, Allied Workers Local Union 22; Thomas Dodd, United Association Plumbers & Pipefitters Local 286; Tim Goebler, Elevator Union; Clint Matthews, Union Elevator Construction; Emily Timm, Workers Defense Project)

BACKGROUND: Education Code, ch. 51, subch. T sets the requirements for public higher education institutions to select contractors for construction and repair projects.

In 2011, the 82nd Legislature enacted HB 628 by Callegari, which consolidated contracting and delivery procedures for construction projects for most governmental entities into Government Code, ch. 2267. HB 628 also contained a right-to-work provision prohibiting a government body from considering in the contracting process whether a person was a member of or had another relationship with any organization.

DIGEST: HB 1548 would amend Education Code, ch. 51 and Government Code, ch. 2267, relating respectively to higher education institutions and government entities, to prohibit a government entity awarding a public works contract funded with state money from prohibiting or requiring bidders to enter into an agreement with a collective bargaining organization. The bill would prohibit the government entity from

discriminating against a contractor based on whether it was or was not party to a collective bargaining agreement or based on a contractor's willingness to enter into such an agreement.

The bill also would add to Education Code, ch. 51 a definition for public work contract already present in the Government Code. A public work contract would be defined as a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013. The bill would apply only to public contracts for which a request for a proposal was first published after the bill's effective date.

**SUPPORTERS
SAY:**

CSHB 1548 appropriately would keep the state out of the business of automatically excluding anyone from bidding for a public contract. Project Labor Agreements (PLAs) increasingly are being used across the country as a means for forcing government entities to award contracts to unionized companies. A PLA is a pre-hire collective bargaining agreement with labor organizations that establishes terms of employment for specific construction projects. Typically, a PLA requires that employees hired for the contract be referred through union hiring halls. Non-unionized companies are in effect either excluded from the contracting process or forced to act as a unionized company for the life of the contract by paying union wage rates, contributing to pension plans, and performing other requirements.

By prohibiting government contractors in the state from requiring bidders to a contract to enter into an agreement with a union, HB 1548 would ensure contracts were open to all companies and awarded based on factors such as cost and quality, not whether employees were part of a PLA. The current national trend is moving in favor of government-mandated PLAs and while such PLAs are not common in Texas at this point, the Legislature should do everything possible to make sure this does not change. Leaders in 14 other states, including Michigan and Maine, have banned government-mandated PLAs.

The bill would not prohibit the use of PLAs but would leave that decision to a contracting company. It should be left up to the government entity to make a decision on a contract based on the existing contracting rules'

focus on quality and cost, not whether a contractor uses a PLA.

**OPPONENTS
SAY:**

It would not be appropriate at this time to discourage government entities from using PLAs. These agreements are useful because contractor and labor disputes are always a potential risk with construction contracts. Through a PLA, the government entity sets out rules in advance that everyone follows, which means that everyone knows how a dispute would be resolved. In addition, use of a PLA can assist government entities in securing a steady supply of skilled labor throughout the contract, which can otherwise be difficult.

The agreements the bill would affect are purely voluntary, and nothing in a PLA would violate the state's right-to-work law. No one forces government agencies to negotiate PLAs, and no one would be forced to join a labor organization in order to be a part of a PLA project.

NOTES:

The companion bill, SB 1381 by Hancock, has been referred to the Senate Government Organization Committee.

SUBJECT: Permanent School Fund guarantee of refinanced charter school bonds

COMMITTEE: Public Education — committee substitute recommended

VOTE: 11 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty,
K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

WITNESSES: *(On original bill:)*

For — Wayne Alldredge, NYOS Charter School; David Dunn, Texas Charter Schools Association; Martha Fernandez, Rosa Olmos Garner, and Ann Stevenson, Uplift Education; *(Registered, but did not testify: Matthew Abbott, Wayside Schools; Michelle Bonton, Natalie Leffall, and Angeil Washington, The Rhodes School; Mark DiBella, YES Prep Public Schools; Andrew Erben, Texas Institute for Education Reform; Eric Glenn, Texas Charter School Association; Richard Rickey, Orenda Education; Nelson Salinas, Texas Association of Business; Larkin Tackett, IDEA Public Schools; Justin Yancy, Texas Business Leadership Council; and three individuals)*

Against — *(Registered, but did not testify: Tiffany Wennerstrom)*

On — Lisa Dawn-Fisher, Texas Education Agency; *(Registered, but did not testify: David Anderson, Texas Education Agency)*

BACKGROUND: In 2011, the 82nd Legislature, 1st called session, enacted SB 1 by Duncan, which allows open-enrollment charter schools that meet certain financial standards to apply to the commissioner of education for designation as a charter district. A charter district may apply for bonds guaranteed by the Permanent School Fund (PSF).

The law limits bond guarantees to the percentage of students enrolled statewide in charter schools compared to the total number of students enrolled in all public schools. Under current enrollment that number is 3 percent.

The bond guarantee program is on hold pending an IRS ruling, according to the Texas Education Agency (TEA).

DIGEST: CSHB 885 would specify that charter districts could apply to refinance existing debt through bonds guaranteed by the PSF. The bill would cap the amount available for refunded or refinanced bonds at one-half of the total amount available for the charter district bond guarantee program.

The bill would take effect September 1, 2013 and would apply only to bonds issued, refunded, or refinanced after the effective date.

SUPPORTERS SAY: CSHB 885 would help eligible charter schools save millions of dollars by allowing them to refinance existing bonds at lower rates. The assumed interest savings on a \$10 million, 30-year bond with the PSF-backed guarantee would be \$10 million.

The bill would clarify that the bond guarantee program for charter schools applies to refunded and refinanced bonds as well as new bonds. Charter schools that have purchased bonds to improve their facilities should have the opportunity to lower their interest rates for the remainder of the repayment period. Charter schools that are able to reduce their facilities costs could have more money for expansion to serve the 100,000 families who are on waiting lists statewide.

Charter schools are at a distinct disadvantage compared to public schools when it comes to facilities funding. They are not allowed to levy taxes to pay for their facilities and are not eligible for programs that provide state funding to help eligible school districts with facilities costs.

CSHB 885 would limit the refinance program to half of the available PSF funds to ensure sufficient money was available for charters schools planning new bond purchases. The bill also would not change the total amount of the PSF that could be tapped for charter school facilities funding.

Existing protections for the bond program would apply to refinancing. Charter schools must be designated as charter districts after undergoing a TEA review, which examines the school's accreditation and the total amount of outstanding guaranteed bonds. The schools must have an investment-grade credit rating. All charter districts with bond guarantees must remit 10 percent of the annual realized savings to a reserve fund in the state treasury as a safeguard in case of default.

Out of 500 charter schools, there are only 93 outstanding bond issues totaling about \$1 billion. Not all of them would be eligible for refinancing, so the PSF should be able to handle the additional underwriting.

**OPPONENTS
SAY:**

Existing law limits the amount of guaranteed charter school bonds to 3 percent of the \$25 billion PSF, or \$75 million. With limited available funds, the priority should be to guarantee new debt and not to refinance existing debt. New debt is more likely to result in expanded facilities, which would allow more children on charter school waiting lists to be served.

CSHB 885 would establish a bond guarantee policy for charter schools that is inconsistent with the policy that applies to public schools, which can only apply for refinancing of debt that was originally guaranteed by the PSF.

It is unclear who owns a charter school facility if a school fails. This could result in the state having to pay off bonds but not having any claim to the facility.

NOTES:

The committee substitute differs from the bill as filed in that it would cap refinanced bonds at an amount not to exceed one-half of the total PSF available for guarantee.

SUBJECT: Limiting tickets for disrupting school to students 12 and older

COMMITTEE: Public Education — favorable, without amendment

VOTE: 11 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

WITNESSES: For — (*Registered, but did not testify*: Yannis Banks, Texas NAACP; Kathryn Freeman, Texas Appleseed; Travis Leete, The Texas Criminal Justice Coalition; Jeff Miller, Disability Rights Texas; Julie Shields, Texas Association of School Boards; Rona Statman, The ARC of Texas; Paul Trietsch Chaney)

Against — None

On — Lauren Rose, Texans Care for Children; Ted Wood, Office of Court Administration; (*Registered, but did not testify*: David Anderson and Lisa Dawn-Fisher, Texas Education Agency; David Slayton, Office of Court Administration)

BACKGROUND: Education Code, sec. 37.124 makes it a class C misdemeanor (maximum fine of \$500) to intentionally disrupt a class or other school activity through the following conduct:

- emitting loud noises;
- enticing or attempting to entice a student away from class or other required school activity;
- preventing or attempting to prevent a student from attending a class or other required school activity; and
- entering a classroom without the consent of either the principal or the teacher and disrupting class activities through acts of misconduct or use of loud or profane language.

Sec. 37.126 creates a similar offense for intentionally disrupting or interfering with the lawful transportation of children on a school bus to or from school or a school-related activity.

In 2011, the 82nd Legislature enacted HB 359 by Allen, which excepted the conduct of students in grade 6 or lower from the offenses of disruption of class and disruption of transportation.

DIGEST: HB 1231 would revise the exceptions to prosecution for disruptive behavior to include students younger than 12 years of age instead of students in grade 6 or lower.

The bill would take effect September 1, 2013, and would apply only to offenses committed after that date.

SUPPORTERS SAY: HB 1231 would protect students younger than 12 years old from being criminally charged with disrupting classes or school transportation. This would eliminate the extreme cases of 10- and 11-year-olds being dragged into the criminal justice system merely for disrupting class.

Law enforcement officers and prosecutors also agree that it is easier to prove age than grade level. Basing the exceptions on age would fall in line with the state's age-based criminal justice system. The bill would implement similar age-based changes added to law in 2011 regarding the issuance of class C misdemeanor tickets for failure to attend school.

HB 1231 would contribute to an ongoing effort to reform these types of zero-tolerance policies that have resulted in a number of children being charged with criminal conduct for misbehaving at school. Studies have found these policies are applied disproportionately to minorities and students in special education programs. There are better ways to deal with horseplay and other disruptive activities without charging young children with a crime. The bill would not prevent criminal charges for behavior that is violent, harassing, or sexual in nature.

OPPONENTS SAY: By limiting who could receive tickets for disrupting classes and school transportation, HB 1231 could reduce the tools available to school districts to handle disruptive students. Teachers, principals, and school bus drivers need to be able to maintain a safe atmosphere for the majority of students who are behaving properly.

OTHER OPPONENTS SAY: The limit should be set higher than age 12 for referring students to the criminal justice system for disrupting classes or school transportation. Criminal offenses that can result in students going before a judge should

be eliminated from the Education Code and placed in the Penal Code.

SUBJECT: Exempting physician practices from paying franchise taxes for vaccines

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 6 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez
1 nay — Strama
2 absent — Martinez Fischer, Ritter

WITNESSES: For — Laura Blanke, Texas Pediatric Society; (*Registered, but did not testify:* Troy Alexander, Texas Medical Association and Texas Public Health Coalition; Laura Blanke, Texas Pediatric Society; Brent Connett, Texas Conservative Coalition; Marshall Kenderdine, Texas Academy of Family Physicians; Nidhi Nakra, The Immunization Partnership; David Reynolds, Texas Medical Association; Bryan Sperry, Children's Hospital Association of Texas; James Willmann, Texas Nurses Association)

Against — None

On — (*Registered, but did not testify:* Teresa Bostick and Ed Warren, Comptroller of Public Accounts)

BACKGROUND: The Texas franchise tax, or “margins” tax, applies to each taxable entity that does business or is organized in the state. The tax is calculated as either 1 percent or 0.5 percent of taxable margin. An entity’s taxable margin is the lesser of 70 percent of the entity’s total revenue or an amount computed by either determining the entity’s total business revenue using a specific method or subtracting either cost of goods sold or compensation.

DIGEST: HB 1310 would allow a taxable physician practice to exclude from total revenue the actual cost paid for vaccines. The bill would define physician practice as an entity that was owned by one or more individuals licensed to practice medicine in the state and that qualified as practicing medicine under the Occupations Code.

The bill would take effect January 1, 2014, and would apply only to a report on or after that date.

**SUPPORTERS
SAY:**

HB 1310 would keep physician-owned practices from having to pay state franchise taxes on the cost of vaccines they purchase. Vaccinations are widely recognized as public goods. The Department of State Health Services has adopted far-reaching vaccination requirements for all children according to an extensive immunization schedule. Many medical care providers offer vaccinations at or near cost as a service to the community and in recognition of the importance of vaccinations to public health.

Under the state's current franchise tax law, however, physician-owned practices have to choose between deducting the cost of goods sold and compensation from total revenue. This calculus almost always leads to a deduction of the latter for medical practices. As a result of this either-or choice, practices are allowed to deduct the costs of administering vaccines but not the cost of the vaccines themselves.

By allowing physician-owned practices to deduct the cost of vaccines from total revenue, HB 1310 would ensure that costs would not be included in tax calculations. The fact that there are larger public educational funding issues in the state is no reason to maintain an unfair tax practice. The bill would have a minimal fiscal impact on the state and a significant impact on doctor-owned practices, many of which are small businesses with limited resources.

While many would agree that the franchise tax is in need of greater reform that is no reason to delay making small changes to make it more fair and equitable for businesses now.

**OPPONENTS
SAY:**

HB 1310 would have an indirect impact on general revenue funds by reducing franchise tax funds flowing to the Property Tax Relief Fund, which was established by the Legislature in 2006 to offset reductions of school property taxes. It would reduce taxes collected for public schools by about \$3.7 million for fiscal 2014-15 and beyond, according to the Legislative Budget Board. Because revenue in the Property Tax Relief Fund is dedicated to public education, any reduction of revenue in the fund must be offset with general revenue funds.

The Legislature should not contemplate measures that reduce funds available for public education without first restoring the deep cuts it made to schools in 2011. Until these cuts are restored, any proposal to reduce

revenue coming into the state that is not absolutely necessary should be tabled.

OTHER
OPPONENTS
SAY:

While the intent of HB 1310 may be laudable, it would continue the state's piecemeal approach to the seemingly endless issues that plague the franchise tax. Under the current tax, many businesses are taxed on expenses that should be exempt, others pay unequal rates for similar activities, and still others have to pay taxes for years where they actually report a net loss of income. Unfortunately, solving a problem for one business or industry leaves out others who are still subject to unfair taxes and can lead to a policy of "legislating by fiscal note" – that is, making those changes that have the most limited impact on the state budget.

The Legislature should embrace comprehensive reform or elimination of the deeply flawed franchise tax and move away from the ad-hoc approach to fixing its various problems.

NOTES:

The Legislative Budget Board's fiscal note estimates HB 1310 would result in a loss of \$3.7 million in revenue to the Property Tax Relief Fund. Any loss to this fund, according to the Legislative Budget Board, would have to be made up with an equal amount of general revenue to fund the Foundation School Program.